



**MINOT RESILIENCE PROGRAM
ACQUISITION OF REAL ESTATE**

POLICY GUIDELINES



November 5, 2018

1.0 Program Overview

The City plans to acquire properties by implementing an involuntary acquisition program. The Involuntary Acquisition Program property valuation will be based upon an appraised current fair market value. The terms of involuntary acquisition must be implemented in accordance with the URA (49 CFR § 24.101(b)(1) and HUD Handbook 1378). The City is exercising its power of eminent domain to acquire properties to remove people from harm's way and for the construction of a flood control project.

Properties located in low-lying areas are at a greater risk of future flooding than properties located in other areas of Minot. An analysis of the lowest-lying areas along the river revealed many properties, including single-family residents, businesses, multi-unit properties, and mobile home parks, at a greater risk for flooding. Some of these areas will not be protected by the flood protection plan for many years, as it initially focuses on protecting critical utility systems. Some of these neighborhoods are also at risk from hazardous materials shipped on the rail lines that run along the river. Evaluation of these sites revealed opportunities to provide effective flood storage areas that can reduce future flood damage and losses and protect from potential hazardous material accidents.

The City's acquisition of property under this program will typically involve acquisition of the lot and all structures. However, upon demonstration of unique circumstances, the City may acquire the lot only. In such a case, the owner is responsible for the removal of the structure(s).

For manufactured home acquisition and relocation policies see Attachment C: Manufactured Home Policies.

The North Dakota State Water Commission (SWC) will match a portion of the CDBG-NDR funds through a global match process. The SWC will provide a portion of the overall budgeted amount instead of a set portion for each property. CDBG-NDR funds will be used primarily for LMI properties.

Any property acquired with the SWC and CDBG-NDR funds, or from which a structure will be removed will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. Only flood control projects which have been approved by the local flood plain manager will be allowed to be constructed on the properties. No other structures will be erected on property acquired, accepted or from which a structure was removed under the acquisition program.

1.1 Participation in the Involuntary Acquisition Program

The City will hold a public meeting for owners of properties identified to be acquired. To make initial contact with each property owner, the City will send letters to everyone inviting them to the public meeting. The City may use other means of distributing information about the program including but not limited to direct mailings, news releases, and web page utilization.

Property owners participating in the involuntary acquisition program are eligible for relocation assistance benefits as stated in the North Dakota Century Code Chapter 54-01.1-16 “... real property must be guided, to the greatest extent practicable under state law, by the real property acquisition policies set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646; 42 U.S.C. 4651-4654] and Uniform Relocation Assistance Act of 1987 [Pub. L 100-17; 101 Stat. 255-256]”

2.0 Conditions

The following conditions apply to the acquisition of property under this program:

- **Closing Date.** A mutually agreed upon date by the City and the seller to close on the property conditioned upon the Department of Housing and Urban Development’s determination of environmental clearance and release of CDBG-NDR funds.
- **Clear Title.** The seller must provide clear title to the City's satisfaction before the closing can occur. The seller must convey the property by warranty deed. Any existing mortgages, liens or other encumbrances will be paid at closing to the extent that funds are available. Any unpaid mortgages, liens or encumbrances are the responsibility of the seller.
- **Taxes and Special Assessments.** Taxes will be prorated to the date of closing. No refund will be made for prepaid special assessments. Seller shall pay any uncertified balance of special assessments or any unpaid special assessments at or prior to closing. Buyer will not assume any unpaid or uncertified special assessments.
- **Abstract.** The City is responsible for the cost of updating any abstract, title insurance policy, or other evidence of title.
- **Offer Expiration Date.** The City will allow thirty (30) days from the date the offer is made for the seller to decide whether to accept the City's offer. The City may permit an extension of the expiration date.
- **Property Inspection.** Upon acceptance of the City's offer, the seller will grant access to the City to inspect the property for personal property, hazardous materials, etc., that must be removed prior to closing.
- **Environmental.** The City shall take steps to ensure that a property with past or present commercial or industrial use, or one that is adjacent to such property, or a property that is suspected of having hazardous contaminants present at the site, is not contaminated at the time of acquisition. The property owner will be required to provide information identifying what, if any, hazardous materials have been deposited or stored on the property. If the City or State determines that a Phase I Environmental Site Assessment is necessary, the City, may conduct a Phase I Environmental Site Assessment prior to the property acquisition. If abatement of hazardous contaminants is warranted, the hazardous

materials must be removed at the property owner's expense. Clean-up costs associated with obtaining a clean site certification, and any costs associated with hazardous materials, are not eligible project costs and will be borne by the property owner. The seller must indemnify the City and State for any liability arising from previous contamination of the property.

An environmental assessment compliant with 24 CFR Part 58 will be completed and an environmental clearance received prior to a commitment to expend CDBG-NDR funds. Note that for residential structures, the homeowner is not responsible for hazardous materials that are an integral part of the structure such as lead paint, asbestos containing insulation, flooring or other surfaces. These types of materials will be identified and managed by the City after purchase of the property.

No Salvage. Except as otherwise authorized by the City, no salvage of any structure, or part thereof, will be allowed. The City will consider salvage by the property owner on a case-by-case basis. In the event salvage is authorized, the value of the salvaged items will be deducted from the purchase price. The City shall determine the value of salvaged items. If any structures, or materials from these structures acquired are resold, the City shall reimburse the SWC their portion of the sale price of these items within 60 days of the re-sale closing date, if the SWC has provided funds for the property acquired by the City of Minot. The remaining portion will be considered program income.

- Subject to City Approval. The offer is subject to City approval of the form of offer and the specific offer terms for each property.
- Removal of Structures. All homes acquired with SWC funds will typically be removed within six months of closing date.

3.0 Acquisition Staff

CDM Smith will subcontract with firms to assist in the acquisition and relocation processes as needed subject to city approval as set forth in the agreement between CDM Smith and the city for project delivery services. The acquisition staff will be available to answer questions and provide relocation advisory services.

The City may obtain additional services to be performed on a contract basis to assist in the acquisition program. The services that may be contracted for include:

- Title searches, certificate, and/or abstracts
- Mortgage property surveys
- Title opinions
- Title insurance
- An escrow agent for closing and/or related services
- Appraisal services
- Environmental investigation and testing, if required
- Other services as needed

4.0 Pre-Offer Activities

Prior to making an offer to purchase, the activities include but are not limited to:

- Identifying the owners of the parcels;
- Identifying the occupancy of any property to be acquired to make the determination if the URA will apply to the occupants. Since acquisition of these properties are involuntary, owners and tenants may be eligible for relocation assistance; including but not limited to: identifying the resources that are necessary to fulfill the URA tenant and owner relocation requirements, including replacement housing, funding for incidental expenses, moving expenses and advisory services.
- Determining the current fair market value by a licensed real estate appraiser which will be used in making offers to purchase;
- Obtaining a review appraisal
- Determining amount of incentive payment if applicable

4.1 Offer Criteria

Along with the initial written purchase offer, the owner shall be given a written summary statement of the basis for the offer of just compensation, which shall include:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired.
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

Major elements of the City's offer that will contribute to informing the offer decision are:

- Purchase Price. Current fair market value. All appraisals will be performed by a licensed real estate appraiser. A review appraisal must also be completed for each parcel acquired through this program.
- Deduction from Purchase Price. As applicable, payments required to clear special assessments, liens, mortgages, fines, judgments, etc., will be paid prior to closing or deducted at the time of closing.

4.2 Negotiations

In order to be in compliance with 49 CFR §24.102, the City, or its representative, shall make an effort to address any counteroffer for the purchase of the real property presented by an owner. The case manager assigned by CDM Smith shall request the owner submit the counteroffer in writing and include the basis for the counteroffer including any pertinent facts the owner feels are supportive of their counteroffer. If the owner has had an appraisal report

prepared on their property within the past twelve (12) months, a request is made to obtain a copy of the report. After the counteroffer and all supporting documentation has been obtained, the documentation is reviewed. If the owner refuses to provide the city with a copy of their appraisal report, then mere claim of its existence as substantiation of the counter offer shall not meet requirements for pertinent facts to support the counter offer. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay (12 months) has occurred since the time of the appraisal(s) of the property, the City shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the City shall promptly reestablish just compensation and offer that amount to the owner in writing.

In the event the City does not agree with the counteroffer presented by the property owner, or the property owner does not accept the recommendation of the City, the property owner will have the right to proceed with the appeal procedure as discussed below.

The City will make every attempt to accurately estimate the current market value of the property. If, after negotiations of the offer, the seller believes the purchase price is incorrect, the seller can present additional information directly relating to the fair market value and appeal the City's offer price. See Attachment A: City's Appeal Process-Offer Price for Involuntary Acquisition.

If the offer is rejected and no further negotiation is anticipated, the file will be referred to the attorney to begin the eminent domain legal proceedings.

4.3 Administrative Settlement

If the City agrees to any increase above the approved offer amount an administrative settlement shall be prepared for the file in accordance with 49 CFR §24.102(i). The administrative settlement will be submitted to the City for review and final approval if City agrees with the settlement and supporting data. If the administrative settlement is approved by the City, the parcel will proceed to closing in the normal manner.

4.4 Procedural Authority

Purchase agreements for acquired properties through the involuntary acquisition process shall be signed by the Mayor and Finance Director. If the Mayor is unavailable, the purchase agreement may be signed by the Council President. Additional paperwork may be delegated to appropriate city staff personnel for execution.

The NDR Program Director, and Finance Director, except as limited herein, have authority to negotiate final prices based on the homeowner and City's best interests, while following applicable local and federal guidance. Negotiated settlements which exceed the City's initial appraisal by 15% and are \$15,000 higher than the City's initial appraisal shall require City Council approval before execution. Negotiated settlements after hearing by the appeal committee which exceed the City's appeal committee finding by 15% and are \$15,000 higher than the appeal committee finding shall require City Council approval before execution.

Negotiations may occur after the initial offer, after an appeal committee decision, and at any point during the eminent domain process prior to judgment.

4.5 Eminent Domain

If required, eminent domain may be used in accordance with applicable federal, state and local law or ordinances to acquire needed property. Requests for use of eminent domain shall be approved, by resolution, on a case-by-case basis by City Council prior to any court actions. The City will typically use a special assistant city attorney to litigate eminent domain actions who will work closely with the city attorney and acquisition team. Court-ordered amounts for acquisitions shall be considered final and do not require city council approval. If negotiations of a settlement prior to judgment occur, the parameters in paragraph 4.4 (above) shall apply regarding final prices. The special attorney shall be authorized to sign agreements on behalf of the City, after the final negotiated settlement is approved by an authorization of person or the City Council pursuant to section 4.4.

5.0 Process After Offer is Accepted

After the seller accepts the offer, the following will be undertaken by the City:

- Update the abstract or title insurance policy.
- Work with the owner/tenant to determine the actual relocation benefits available to the owner and/or tenant, as appropriate.
- Order any title searches, abstract work, title opinion or title insurance, and provide forms of affidavits, releases and other necessary closing documents.
- Prepare a closing statement and schedule the closing and any necessary property inspections.
- Disburse funds at closing in accordance with the closing statement. After the closing, the City will transmit and file all necessary documents in order to close the acquisition of the property.

6.0 Relocation Benefits

The City is offering this program as an involuntary acquisition. Accordingly, the notices and processes required by the North Dakota Century Code Chapter 54-01.1 and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) apply to this program. Property owners and tenants participating in these involuntary acquisition programs may be eligible for relocation assistance benefits under North Dakota Century Code Chapter 54-01.1 and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The following is a general overview of benefits which may be available to property owners and/or tenants. Final determination of specific benefits available will be made on a case-by-case basis based upon applicable state and federal laws and regulations. Recipients of relocation benefits must be a United States citizen or eligible immigrant.

6.1 Replacement Housing Payment for 90-Day Occupants

Eligibility. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$7,200.00 for rental assistance, as computed in accordance with paragraph (b) of §24.402; as amended by MAP-21, or down payment assistance, as computed in accordance with paragraph (c) of §24.402; as amended by MAP-21, if such displaced person:

- Has been a legal resident occupant of the property for which the City has approved acceptance of the purchase offer and the tenant can prove evidence of the tenancy for a minimum of 90 days prior to the Initiation of Negotiations (ION) for acquisition of such property or for properties or the tenant can prove evidence of tenancy at the time of the flood event. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act due to the 2011 flood as described at §24.401(a) and §24.402(a) as amended by MAP-21 and
- Has rented, or purchased, and occupied a (DSS) replacement dwelling that is not located in an Area "A" on the NFIP Flood Hazard map within one year (unless the City extends this period for good cause) after:
 - For a tenant, the date he or she moves from the displacement dwelling; or
 - For an owner-occupant, the later of:
 - The date he or she receives final payment for the displacement dwelling; or
 - The date he or she moves from the displacement dwelling.

6.2 Determination of Rental Assistance Payment

- Amount of payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$7,200.00 for rental assistance. (See §24.402; as amended by MAP-21). Per HUD Waiver, such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:
 - The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
 - The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.
- Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is:
 - The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the City (for an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a demonstrable hardship because of the person's income or other circumstances);
 - The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

- Manner of disbursement. Relocation assistance payments for residential tenants who are displaced as a part of the City of Minot’s CDBG-DR funding of buyouts and acquisitions are subject to 42 USC Sec. 3537c and must be disbursed in installments, except that lump sum payments may be made to cover (1) moving expenses, (2) a down payment on the purchase of replacement housing, or incidental expenses related to (1) or (2). Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing. The City of Minot will disburse these relocation payments in equal installments on a monthly basis, not extending beyond the lease termination date. In cases of potential financial hardship, additional rental funds may be included for initial payment if required by lease (example: first and last month rent up front).

6.3 Replacement Housing Payment for 90-Day Homeowner-Occupants

Eligibility. A displaced person, defined in 49 CFR 24.2(a)(9) is eligible for a Replacement Housing Payment for a 90-day homeowner occupant if the person meets the following:

- Actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the ION, the occupant can prove evidence of tenancy at the time of the flood event. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act due to the 2011 flood as described at §24.401(a) and §24.402(a) and as amended by MAP-21. A person is considered to have met the requirements as owner of a displaced dwelling if the person meets the definition, “Owner of a Dwelling” at 49 CFR 24.2 (a) (20); and
- Purchases and occupies a DSS replacement dwelling that is not located in an Area "A" on the NFIP Flood Hazard map within one year of the later of:
 - The date the person receives final payment for the displacement dwelling; or
 - In the case of condemnation, the date of the court award of just compensation is deposited with the court; or
 - A comparable replacement dwelling that meets DSS standards has been made available to the person.

6.4 Determination of Replacement Housing Payment Owner

The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed \$31,000.00 unless last resort housing is justified. (See also §24.404 and as amended by MAP-21). The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The calculation for a replacement housing payment under 49 CFR 24.401(b); as amended by MAP-21 shall be the sum of:

- The purchase price differential (49 CFR 24.401(c); as amended by MAP-21). This is the amount by which the cost of a comparable replacement dwelling exceeds the acquisition cost of the displacement dwelling, and
- Increased mortgage costs (49 CFR 24.401(d); as amended by MAP-21), and

- Incidental expenses described in (49 CFR 24.401(e); as amended by MAP-21). HUD Form 40057, Claim for Replacement Housing Payment for 90-Day Homeowner will be used to document and support the amounts claimed and paid to the homeowner.

6.5 Issues that May Affect Housing Replacement Payments

The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (§ 24.2(a)(6); as amended by MAP-21).

- The Comparable Dwelling lacks major exterior attribute (49 CFR 24.403(a)(2)). If the site of the comparable replacement dwelling lacks a major exterior attribute such as the site is much smaller or contains a swimming pool, etc., the value of such shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the purchase price differential payment.
- Mixed-use and Multifamily Properties (49 CFR 24.403(a)(7)). If the displacement dwelling was part of a property that contained another dwelling unit and or space used for nonresidential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the purchase price differential. The City will ask its appraiser to make this determination at the time of the appraisal of the displacement property.
- Owner Retention of Displacement Dwelling (49 CFR 24.401(c)(2); as amended by MAP-21). If the homeowner retains ownership of the displacement dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be deemed to be the sum of:
 - The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
 - The cost of making the unit a meet DSS standards replacement dwelling; and
 - The estimated current fair market value for residential use of the replacement site (appraisal not required), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
 - The retention value of the dwelling, if such retention value is reflected in the “acquisition cost” used when computing the replacement housing payment.
- Partial Acquisition Leaves Buildable Remainder (49 CFR 24.403(a)(3); as amended by MAP-21). If the acquisition of a portion of a residential property causes the displacement of the owner from the dwelling and the remainder is a suitable, buildable residential lot, the City may offer to purchase the entire property. If the owner refuses to sell the remainder to the City, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
- Use of a currently owned, previously purchased dwelling, valuation of which will be on the basis of current market value.
- Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the City, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the City determines that two or more occupants maintained

separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

6.6 Maintaining Tenure of 90-Day Homeowner

Owner of Entire Fee Interest. A 90-day homeowner-occupant who owns fee simple title to the displacement dwelling and thus will receive all net acquisition proceeds must have the opportunity to purchase a comparable replacement dwelling without incurring an increase in the total outstanding mortgage debt, or an increase in the number of, or amount of, mortgage principal and interest payments.

Owner of Fractional Interest (49 CFR 24.404(b)). The City is not required to provide to a person who owned only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the City would be required to provide if the person owned the entire interest in the displacement dwelling. If such assistance is not sufficient to enable the person to buy a replacement dwelling, the City may provide additional purchase assistance or it may elect to offer rental assistance. Generally, the amount offered as rental assistance should not be less than the amount available for purchase under 49 CFR 24.401(b) ; as amended by MAP-21.

Rental Assistance for 90-Day Homeowner (49 CFR 24.401(f)). A displaced 90-day homeowner who elects to rent, rather than buy a replacement dwelling is eligible for rental assistance as described in 49 CFR 24.401(f). If, within one year after receiving final payment for the displacement dwelling, such displaced homeowner-occupant subsequently elects to again purchase and occupy a DSS replacement dwelling, the replacement housing payment may be converted to purchase assistance.

6.7 Owner or Tenant-Owned Business

If, in addition to the owner or tenant being a legal residential occupant of the property, the owner or tenant also owned a business operated exclusively from this property and this business was legally operating (had the appropriate governmental permits, was in conformance with zoning regulations, etc.) and filed business income tax returns, the owner or tenant-owned business may also be eligible for business relocation assistance. In determining relocation assistance for a home-based business, to avoid duplication of benefits the portion of the real property that was dedicated to the business will be excluded in identifying comparable replacement housing and in calculating a potential replacement housing payment.

6.8 Relocation Payments – Businesses, Farms & Nonprofit Organizations

Businesses, farms and nonprofit organizations may be eligible for relocation assistance and advisory services.

Advisory Services. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility

requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

- The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
- Determination of the need for outside specialists in accordance with Uniform Act §24.301(g) (12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
- For businesses, an identification and resolution of personality/realty issues. Every effort must be made to identify and resolve realty/personality issues prior to, or at the time of, the appraisal of the property.
- An estimate of the time required for the business to vacate the site.
- An estimate of the anticipated difficulty in locating a replacement property.
- An identification of any advance relocation payments required for the move, and the City's legal capacity to provide them.

Payments for Moving and Related Expenses. Two general moving options are available to an eligible displaced business, farm or nonprofit organization under the URA:

- Payment of actual, reasonable and necessary moving and related expenses. In addition to the payment of actual, reasonable and necessary moving costs, a small business (defined in 49 CFR 24.2(a) (24)) may also be eligible for the actual, reasonable and necessary costs of reestablishment up to \$25,000; or
- A fixed payment, in lieu of payment of actual, reasonable and necessary moving costs and reestablishment expenses. An eligible business, farm or nonprofit organization may be eligible for a fixed payment of no less than \$1,000 and no more than \$40,000 (see 49 CFR 24.305, as amended by MAP-21).

6.9 Determination of Benefits

The acquisition staff will determine benefits in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the Waivers and Alternative Requirements for CDBG-NDR Grantees under HUD Appropriations Act, 2012; and/or North Dakota Century Code Chapter 54-01.1, as appropriate. If there are any inconsistencies or discrepancies between this document and applicable law or regulation, such applicable law or regulation shall control.

6.10 Replacement Housing Requirements

All owners or tenants receiving the replacement housing benefits must relocate to housing units that meet DSS standards and not located in an Area "A" on the City of Minot flood hazard maps. The "Decent, Safe, and Sanitary" standard is similar to HUD Housing Quality Standards. The City will also accept a current rental occupancy certificate for rental units and a certificate of occupancy for newly-constructed houses in lieu of a "decent, safe, and sanitary" inspection.

The DSS inspection is not a certification or guarantee of the housing unit's condition or of its major systems (such as heating, plumbing, and electrical). It is necessary to satisfy the requirements of the City's program funding sources.

6.11 Last Resort Housing

The term Last Resort Housing is an administrative procedure authorized by law to address those times when comparable replacement housing is not available under statutory limits specified in law.

The City shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (*See* §24.2(a)(6)(viii)(C)). Such assistance shall cover a period of 42 months. The law and regulation allow the City to provide a replacement housing payment in excess of the statutory maximums of \$7,200.00 and \$31,000.00. Any decision to provide last resort housing assistance must be adequately justified either:

- On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
 - The availability of comparable replacement housing in the program or project area;
 - The resources available to provide comparable replacement housing; and
 - The individual circumstances of the displaced person, or
- By a determination that:
 - There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;
 - A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
 - The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

Methods of providing comparable replacement housing: The City shall have broad latitude in implementing this subpart of the regulation, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

- The methods of providing replacement housing of last resort include, but are not limited to:
 - A replacement housing payment in excess of the limits set forth in §24.401 or §24.402; as amended by MAP-21. A replacement housing payment under this section may be provided in installments or in a lump sum at the City's discretion.
 - Rehabilitation of and/or additions to an existing replacement dwelling.
 - The construction of a new replacement dwelling.
 - The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
 - The relocation and, if necessary, rehabilitation of a dwelling.
 - The purchase of land and/or a replacement dwelling by the displacing Agency and subsequent sale or lease to, or exchange with a displaced person.
 - The removal of barriers for persons with disabilities.

6.12 Payment for Moving and Related Expenses

Any displaced residential owner-occupant or tenant-occupant who qualifies as a displaced person (49 CFR 24.2(a)(9)) is entitled to a payment for his or her moving and related expenses. The displaced person may choose a payment for actual reasonable moving and related expenses, or a fixed payment for moving expenses.

- Actual Reasonable Moving and Related Expenses (49 CFR 24.301(g)(1)(7); as amended by MAP-21). A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the methods described at 49 CFR 24.301(b).
- Fixed Payment for Moving Expenses (49 CFR 24.302; as amended by MAP-21); This payment is determined based on the applicable Fixed Residential Moving Cost Schedule published by the Federal Highway Administration. The allowance reflects the number of rooms in the displacement dwelling, all moving and related expenses and takes into consideration whether the displaced person owns and must move furniture.

6.13 Appeal of Relocation Benefits

Appeals of the relocation benefits for tenants and tenant-owned businesses will be handled in accordance with the Uniform Relocation Act (URA). See Attachment B: City Appeals Process-Displacement.

6.14 Subsequently Located Persons

Once a person, as amended by MAP-21, is identified as a former occupant who had moved and had not been previously contacted regarding relocation, a letter will be provided with the following information:

- If the person is currently occupying DSS housing, the computation of rental assistance payment will use the current abode's actual housing cost compared with the housing cost that was actually paid prior to flood displacement. A fixed room count moving cost should also be computed.
- If the tenant is occupying non-DSS housing currently, the payment should be computed on a DSS dwelling unit that is currently available. Rental assistance would be computed using an available housing unit which is DSS compared to the flood displacement unit. A fixed room count or actual moving cost should be paid to permit the person to move their personal property to their selected unit.
- Other situations such as multiple post flood dwelling unit occupancy. In this case, an attempt should be made to base the payment on the first dwelling permanently occupied by the individual (non-temporary housing). However, the goal is to assure that everyone has the ability to occupy a DSS dwelling unit, so this policy must have some flexibility.

If the displaced person purchased a replacement dwelling in which they now live, the policy below will be followed:

- If the owner-occupant currently occupies a DSS dwelling which is reasonably similar to the subject (flood) property, the computation of replacement housing will be based on

the difference between the pre-flood assessed value compared with the cost of the currently occupied dwelling unit. Closing costs and possible mortgage interest differential would also be calculated routinely based on the purchase of the current replacement dwelling. A fixed room count moving payment could be paid to the occupant.

- If the owner is currently occupying non-DSS housing, the payment should be computed on a DSS dwelling unit that is currently available. The dwelling unit used for computation should be reasonably similar to the subject. The price differential would be computed using an available housing unit which is DSS compared to the flood displacement unit. A fixed room count or actual moving cost should be paid to permit the person to move their personal property to their selected DSS unit.
- It is possible that an owner has occupied several units since their initial flood required move. In this case, an attempt should be made to base the payment on the first dwelling permanently occupied by the individual (non-temporary housing). However, the goal is to assure that everyone has the ability to occupy a DSS dwelling unit, so this policy must have some flexibility.

The use of the phrase reasonably similar should be interpreted to mean “comparable” for purposes of payment computations. However, it is understood that there is no good, available description of the subject dwelling, so a strict adherence to the standards or comparability is not practical. However, the DSS standard remains.

The intent is not to provide an incentive to cause further displacement of an already relocated person. This might be an inadvertent effect of using a comparable dwelling for those persons already residing in a DSS unit rather than basing the payment on their current DSS dwelling.

7.0 Program Income

If properties are sold for relocation the program income will be used to reduce the next reimbursement request submitted per the City’s Action Plan. The program income will be allocated back to the funding source based on the amount contributed per funding source. For example, if the North Dakota State Water Commission provides 75% and CDBG-NDR provides 25%, 75% of the program income will go to the North Dakota State Water Commission and 25% to CDBG-NDR.

8.0 Term of Involuntary Acquisition Program

This Involuntary Acquisition Program is intended to begin October 15, 2016 and terminate on September 30, 2022. Any property owner participating in the involuntary program must have an executed purchase agreement with the City prior to May 2, 2022 and close on the property by July 1, 2022. However, the dates of the program are subject to availability of funding.

Following closing, the City, in its sole discretion, will determine whether any structures remaining on the property will be demolished or relocated for a future use.

9.0 Fair Housing Laws

Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. These Acts and Executive Order 11063 make discriminatory practices in the purchase and rental of residential units illegal if based on race, color, religion, sex, or national origin.

Whenever possible, a minority person shall be given reasonable opportunity to relocate to a DSS replacement dwelling which is not located in an area of minority concentration that is within their financial means. This policy does not require the City to provide a displaced person with a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

Attachment A: City's Negotiation Process-Flood Protection Acquisitions/Buyouts

The City will make every attempt to accurately appraise the pre-flood or current fair market value of properties necessary for the construction, operation and maintenance of the flood protection project. If, after the presentation of the offer, the property owner believes the offer price is incorrect, the property owner can present additional information directly relating to the fair market value of the property.

Property owner(s) may present information which the property owner deems relevant in support of the property owner's counter offer. The information submitted by the property owner must include, at a minimum, the basis for the counteroffer and shall include factual information, appraisals and any other data to support the reason for the appeal or counter offer to increase the offer price.

The City will make a reasonable and diligent attempt to acquire the property by negotiation. If the property owner's information is found to be reasonable and well supported, the acquisition staff, upon approval of John Zakian, NDR Program Manager, or his designee, may authorize a revised offer.

A person has the right to be represented by legal counsel or other representative in connection with his or her case, but solely at the person's own expense. The City of Minot shall permit the person to inspect and copy all materials pertinent to his or her case, except materials which are classified as confidential. The imposition of reasonable conditions on the person's right to inspect will be set consistent with applicable laws.

The time limit for initiating negotiations is thirty (30) days after the person receives written notification of the City of Minot's determination of the person's property value. Negotiations shall be considered unproductive if the city receives no response to an offer or counteroffer after 30 days. Negotiations may be terminated in writing by either party and eminent domain proceedings may begin.

All counter offers must be in writing and addressed to John Zakian.

Contact Person: John Zakian, National Disaster Resilience Grant Program Manager

Address: P.O. Box 5006 Minot, ND 58702-5006

Written appeals shall be considered regardless of form. A written appeal must be submitted to contact person listed above.

Attachment B: Uniform Relocation Appeals—Flood Protection Acquisitions

The City of Minot will promptly review appeals in accordance with the requirements of applicable law and 49 CFR § 24.10 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act or URA) regulations.

Any person who has been displaced for a federally-assisted project may file a written appeal with the City of Minot if the person believes that the City of Minot failed to properly consider their application for assistance under the Uniform Act.

Relocation assistance issues that may be appealed include, but are not limited to, a person's eligibility for a relocation payment or the amount of a relocation payment provided. Relocation payments include payment for moving, replacement housing or commercial re-establishment expenses.

A person has the right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense. The City of Minot shall permit the person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential. The imposition of reasonable conditions on the person's right to inspect will be set consistent with applicable laws.

The time limit for filing a request for negotiations or appeal is thirty (30) days after the person receives written notification of the City of Minot's determination of the person's eligibility for assistance or the amount of assistance claimed.

Negotiations and appeals shall be considered unproductive if the city receives no response to an offer or counteroffer after 30 days. Negotiations and appeals may be terminated in writing by either party and eminent domain proceedings may begin.

A displaced person may contact the City of Minot if they wish to discuss filing an appeal. Written appeals shall be considered regardless of form. A written appeal must be submitted to:

Contact Person: John Zakian,
NDR Program Manager
Address: P.O. Box 5006
Minot, ND 58702-5006

The City of Minot will respond to the appellant within fifteen (15) calendar days of receipt of the appeal to acknowledge receipt of the appeal, to provide an opportunity to the person to submit additional information and to inform the person when they can expect a decision.

In deciding an appeal, the City of Minot will consider pertinent justification and material submitted by the person to ensure a fair and full review of the appeal. The City of Minot shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and provide a copy to the person within 45 days after receipt of all information submitted by the person in support of the appeal.

The City of Minot's response shall include, but need not be limited to:

1. The determination on review of the appeal;
2. The factual and legal basis upon which the decision is based, including any pertinent explanation;
3. If any payment or other relief to the person is required to be made, the amount and manner of payment should be outlined in the response to the individual along with a statement of the person's right to seek the assistance in the event such relief is not provided within 45 days;
4. If the full relief requested is not granted a statement of the person's right to seek a judicial review; and
5. The final decision on the written appeal will be made by the NDR Program Manager John Zakian.

Request for Additional Time

If a person makes a reasonable request for additional time to gather information and prepare for a written appeal or request a review by the City of Minot, he or she shall be granted a reasonable amount of time.

Determination on Persons Not Displaced

Review of a displacing Agency's determination that a person is not displaced is to be undertaken in the same manner as explained above.

Tracking

The City will develop a tracking system to ensure all deadlines are met when an appeal is filed.

Contact Person. If you have questions about your relocation or need additional information or assistance, please contact:

Laura Wheeler or Tammy Small
CDM Smith
1600 2nd Ave SW Ste. 27
Minot, ND 58701
(701) 837-5813
wheelerly@cdmsmith.com
smallt@cdmsmith.com

Attachment C: Manufactured Home Policies

1.0 Program Overview

In North Dakota, manufactured homes and recreational vehicles are considered as personal property and will be relocated as personal property, unless they have been classified as real property under North Dakota Century Code, (NDCC), 47-10-27.

A manufactured home classified as real property will be appraised and acquired under the acquisition process. The occupants will be eligible for the same moving and replacement housing benefits as occupants of other residential dwellings. The policies and procedures in this section refer to manufactured homes which are classified as personal property.

Advance relocation planning is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 49 CFR Part 24, (URA or Uniform Act) for Federally-assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families and businesses and develops solutions to minimize the adverse impacts of displacement. In the case of a manufactured home park, the City will determine if there are an adequate number of spaces and/or replacement manufactured homes available in the market. In instances where the availability of replacement spaces or replacement manufactured homes is questionable, the City may consider housing alternatives to provide for replacement dwellings.

When a partial acquisition of a manufactured home park would leave the remainder in a condition such that the continued operation of the park is unfeasible, and the City determines that the manufactured homes located on the remainder of the property must be relocated as a direct result of the project, the owner and any tenants shall be considered as displaced persons and eligible for relocation assistance and payments.

A recreational vehicle (RV) located within the proposed project that is functioning as a permanent dwelling will be reviewed on a case by case basis to establish relocation eligibility and replacement potential. If classified as a dwelling on real property to be acquired, the occupants will be entitled to the same moving and replacement dwelling benefits as occupants of other residential dwellings. If classified as personal property it will be relocated as personal property.

- An RV on a parcel located in a manufactured home or RV park serving as a primary residence, may or may not be self-propelled. The unit may no longer run or may have to be towed, but still provides a URA compliant DSS dwelling.
- An RV at a residential property with utility hook ups, providing the equivalent of “mother-in-law” living quarters for a permanent residence, or
- Any situation where the occupant(s) of an RV are living in the unit on a full-time basis and the unit meets the URA DSS standard.

2.0 Initial Contact

At the time of initial contact with a displaced person of a manufactured home, documentation will be collected and completed in accordance to the Manufactured Home SOPs.

A determination on the feasibility of moving the manufactured home, and a determination of whether the manufactured home meets DSS standards before the manufactured home is moved will be conducted.

3.0 Moving Payments

Owner-occupants of manufactured homes are eligible for actual moving expenses for moving their manufactured homes and personal property. An itemized receipt/invoice must be provided for reimbursement.

The following rules apply to actual moving expenses:

- Reimbursement of actual costs for meals, lodging and transportation are eligible when determined to be reasonable and necessary because of the move.
- Reimbursement of utility service charges and any license or permit fees are eligible when required because of the move.
- If a manufactured home requires repairs and/or modifications so it can be moved or made to meet the DSS standard, such repairs are reimbursable as a moving expense when the City determines it is economically feasible to relocate the manufactured home. For example, if the deck is the incorrect height it will be repaired or replaced with a comparable deck.
- Reimbursement of a non-refundable manufactured home park entrance fee is eligible to the extent it does not exceed the fee at a comparable manufactured home park or to the extent the payment is necessary to effect relocation.

Actual expenses for moving a manufactured home shall include the cost of unblocking, disconnecting, crating, loading, insuring, moving, re-blocking, reinstalling and reassembling any personal property and attached appurtenances which includes expanding rooms, “pop-outs”, porches, decks, awnings, skirting, steps and anchoring the unit if required.

If an owner-occupant of a manufactured home sells or trades-in the manufactured home, the owner is eligible only for a payment for moving the personal property from the manufactured home. This payment will be based on the actual moving costs in accordance with Moving and Related Expenses: URA Section 24.301, or a self-move in accordance with the Fixed Rate Residential Moving Cost Schedule, URA Section 24.302.

Tenant-occupants of manufactured homes are eligible for their moving expenses in accordance with Moving and Related Expenses: URA Sections 24.301 or 24.302, as though they were occupying a conventional dwelling.



Non-occupying owners of manufactured homes are eligible for their moving expenses in accordance with Actual Expense provisions in Moving Payments-Businesses, Farms and Non-Profit Organizations, under URA Section 24.301.

The City will provide direct payment to a vendor hired by a manufactured home owner, including payment to a manufactured home transporter. It may be used by either owners or owner/occupants of manufactured homes, and is used with the actual expense move of the manufactured home.

In conjunction with paragraphs above, skirting, awnings and other appurtenances which are moved with the manufactured home are considered as re-installation of personal property and charged as a moving expense. If the skirting and awnings cannot be moved without substantial damage or unreasonable costs, or a manufactured home does not have skirting and awning but park regulations require same, costs for them will become a replacement housing payment.

4.0 Replacement Housing

To establish eligibility for replacement housing payments, the following general rules shall apply:

- The ownership or tenancy of the manufactured home will determine the occupant's status as an owner or a tenant.
- The length of ownership and occupancy of the manufactured home on the manufactured home site or park will determine the occupant's status as a 90-day owner or tenant.
- The manufactured home must be occupied on the same site for the required 90 days to make the occupant eligible for the appropriate payment limitations of \$7,200 or \$31,000, or the limitations provided by Replacement Housing of Last Resort, URA Section 24.404; as amended by MAP-21.

After the displaced person's status is determined, the replacement housing payment is computed in two parts.

- The replacement housing or rent supplement payment for the manufactured home is computed in accordance with those procedures outlined in Replacement Housing, URA Subpart F: Manufactured Homes.
- The replacement housing or rent supplement payment for the manufactured home site will also be computed in accordance with those procedures outlined in Replacement Housing, URA Subpart F: Manufactured Homes
- The sum of the two parts computed above cannot exceed the maximum limitation of the \$7,200 or \$31,000, or the limitations provided by Replacement Housing of Last Resort, URA Section 24.404; as amended by MAP-21.

The following shall be used as a guide for determining eligibility for replacement housing payments.

- Owner-Occupants over 90-Days:



- Acquisition of Manufactured Home and Site: Eligible for purchase supplement for a manufactured home and site or rental supplement for a manufactured home and site.
- Acquisition of Manufactured Home Only, Owner-Occupant Rents Site: Eligible for purchase supplement on a manufactured home or rental supplement for a manufactured home, plus rental supplement or down payment on a site.
- Acquisition of Site Only, Manufactured Home Moved: Eligible for purchase supplement on a site or a rental supplement on a site.
- Acquisition of Rented Site Only, Manufactured Home Moved: Eligible for a rental supplement or down-payment on a site.
- Tenant Occupants over 90-Days:
 - Acquisition of Manufactured Home and Site: Eligible for rental supplement or down-payment on a manufactured home and site.
 - Acquisition of Manufactured Home Only, Owner-Occupant Rents Site: Eligible for rental supplement or down-payment on a manufactured home plus a down-payment or rental supplement on a site.
 - Acquisition of Site Only, Manufactured Home Moved: Eligible for a rental supplement or down-payment on a site.
 - Acquisition of Rented Site Only, Manufactured Home Moved: Eligible for a rental supplement, or a down-payment on a site or a replacement dwelling.
- Since a manufactured home is classified as personal property under North Dakota law, the displaced owner-occupants may be entitled to a replacement housing payment for the manufactured home, only in the following instances:
 - The manufactured home does not meet DSS standards, or
 - The structural condition of the manufactured home prevents it from being moved without substantial damage or unreasonable costs, or
 - The manufactured home does not meet comparable manufactured home park requirements.
 - The manufactured home does not meet the cost benefit analysis conducted by the City in accordance with the Manufactured Home SOP.

If one of the conditions above exists, and it is not economically feasible to correct the condition, the replacement housing payment will be the lesser of the following:

- Purchase price of a comparable manufactured home less the trade-in value for their present manufactured home, or
- Purchase price of a comparable manufactured home presently set up in a park less the salvage value of their present manufactured home.

The trade-in value above will be determined by the most current edition of the National Automanufactured Dealers Association, (NADA), Guide for Manufactured and Manufactured Homes, or a value established by a licensed manufactured or manufactured home dealer in the Minot area. The trade-in value will be deducted from the cost of the replacement manufactured home.



The salvage value above will be determined by the most current edition of the National Automanufactured Dealers Association, (NADA), Guide for Manufactured and Manufactured Homes, or a value established by a licensed manufactured or manufactured home dealer in the Minot area. The salvage value will be used only when the manufactured home cannot be traded in because of its condition. The salvage value will be paid directly to the displaced person unless otherwise requested.

In addition to the purchase option mentioned above, the displaced person may also be eligible for a rental supplement based on the difference between their present rent and the space rent at an available park.

An owner-occupant may also be eligible for a replacement housing payment if the manufactured home does not meet comparable manufactured home park entrance requirements. The amount of replacement housing payment will be determined by using the “trade-in value”, as discussed above or the cost to rehabilitate the existing manufactured home, whichever is less.

The total replacement housing payment shall not exceed the maximum payment, either \$31,000 or \$7,200, or the limitations provided by Replacement Housing of Last Resort, URA Section 24.404; as amended by MAP-21.

5.0 Procurement of Contractors

Manufactured homeowners are required to provide a minimum of two quotes from contractors to perform the work identified by the City of Minot. However, if a homeowner is unable to locate two qualified contractors, one quote is acceptable under 49 CFR 24.301 d. 2 (i) “the lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person. At the Agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.” The contractor chosen must be licensed and insured.

If the quotes are within 10% of one another, the owner may choose either one. If the quotes are not within 10% and the property owner wishes to choose the higher quote, the owner must pay the difference.

The program by federal law cannot pay for upgrades. The program will only pay to repair or replace what was damaged by the move. The property owner can pay the difference of any item that is considered an upgrade.

