

City of Minot



**MINOT DISASTER RECOVERY PROGRAM
PROGRAM FOR ACQUISITION/BUYOUT OF REAL
ESTATE
POLICIES AND PROCEDURES**

EQUAL HOUSING
OPPORTUNITY
October 27, 2021



Part I: Program for Involuntary Acquisition/Buyout of Real Estate Policy

1.0 Program Overview

The City published Amendment #10 on June 10, 2015 transferring unused monies from the CDBG-DR allocation 1 to the acquisition/buyout project delivery activity. The City also published Amendment #2 on June 10, 2015 transferring monies left over from completed recovery activities in CDBG-DR Allocation 2 to the acquisition/buyout program. Additional properties will be acquired with these monies that are now budgeted under the acquisition/buyout programs in Allocations 1 and 2. This program will be operated as an involuntary acquisition and buyout program because the property being acquired is part of a planned flood control project.

Any property acquired with North Dakota State Water Commission Funds and Community Development Block - Disaster Recovery 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, buyout, or relocation program.

This document was amended to consolidate and update the policies the City of Minot will adhere to for the involuntary acquisition/buyout program as of the date of this policy.

2.0 Involuntary Acquisition Acquisition/Buyout Programs

The City plans to implement Involuntary Acquisition and Involuntary Buyout Programs. The Involuntary Acquisition Program property valuation will be based upon an appraised fair market valuation and the Involuntary Buyout program will be based on the appraised pre-flood value or an agreed upon equivalent. The terms of involuntary acquisition/buyout must be implemented in accordance with the URA (49 CFR § 24.101(b)(1) and HUD Handbook 1378, Appendix 32).

2.1 Participation in the Involuntary Acquisition/Buyout Programs

The City will make offers to owners of properties located in the footprint of the proposed flood control project. To make initial contact with each property owner, the City will send letters to everyone who is in the first phase of the City's flood control plan. The City will





use other means of distributing information about the program including public meetings, direct mailings, news releases and posted announcements on their web page.

Property owners wishing to participate in the involuntary acquisition/buyout programs may be eligible for relocation assistance benefits under North Dakota Century Code Chapter 54-01.1 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA).

Eminent domain will not be used for those properties which are not needed at this time for the flood control project. The City, however, reserves its right to exercise its eminent domain authority at a later date for those properties.

Seller shall have the right to rescind any offer and acceptance at any time prior to executing a purchase agreement. Any rescission of offer and acceptance shall be placed in writing and delivered to the City's authorized agent.

2.2 Determination of Program Type

There are two programs by which the City will acquire properties in the footprint. Both programs will require appraisals and review appraisals. Below are brief descriptions of the properties which will be acquired through each program. The status of repairs or improvements to the structure and ownership status will determine which program each property will be acquired through.

Involuntary Acquisition Properties - Properties which have transferred ownership since the flood of 2011 or contain structures that have been substantially repaired and improved since the flood of 2011 will be acquired through the Involuntary **Acquisition** Program.

Involuntary Buyout Properties - Properties which do not contain structures or have structures which have not been substantially repaired or improved since the flood of 2011 will be acquired through the Involuntary **Buyout** Program.

2.3 Offer to Purchase

The City's offer will be based upon appraisals. The pre-flood appraisal will be used as an equivalent to market value of the property if the property has not been substantially rehabilitated (involuntary buyouts) and remains in the same ownership as at the time of the flood. If the property has been substantially rehabilitated or the current owner was not the





owner at the time of the flood, the current fair market value of the property will be used for these properties (involuntary acquisitions). The City will use a licensed appraiser to determine the current fair market value for rehabilitated properties and pre-flood value for the involuntary buyouts. If the structure was demolished prior to the City's offer to purchase because of imminent threat to life, health or property created by the flood event, the property owner will be offered the pre-flood appraised value.

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. Upon receipt of a counteroffer, Swanson & Warcup (S&W) 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 a request should be made by S&W to obtain a copy of the report. After the counteroffer and all supporting documentation has been obtained by S&W, the documentation shall be delivered to CDM Smith (CDM) for review. CDM and S&W will discuss all applicable documentation that has been submitted and make a recommendation to the City on the merits of the counteroffer. If the City agrees to any increase above the approved offer amount an administrative settlement shall be prepared for the file by CDM and S&W in accordance with 49 CFR §24.102(i). The administrative settlement will be submitted to the City for review and final approval if the 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.

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

If the offer is rejected and no further negotiation is anticipated, the acquisition staff will close the property's file.

The property owner may discontinue negotiations at any time prior to the execution of an acquisition agreement. However, if the seller breaches or terminates the purchase agreement the seller will be responsible for liquidated damages as described in Section 2.9(14), below.

2.4 Appeal Offer Price

The City will make every attempt to accurately estimate the pre-flood or 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 pre-flood market value or post flood market value, depending on renovations being completed and appeal the City's offer price. See Attachment A: City's Appeal Process-Offer Price for Involuntary Acquisition.

2.5 What is to be Acquired

In General

The City of Minot will acquire properties subject to funding availability. The City's acquisition of property under this program will typically involve acquisition of the lot, all structures and mineral rights. 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).

2.6 Pre-Acquisition Activities

The City is undertaking a number of activities relating to eligible properties prior to making an offer to purchase. Briefly, these activities include but are not limited to:

1. Identifying the owners of the parcels;
2. 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. Identifying the resources that are necessary to fulfill the URA tenant and owner relocation requirements including replacement housing, funding for the expenses, and additional time necessary to fulfill the URA requirements;
3. Determining pre-flood value if the property has not been substantially rehabilitated, or current fair market value if the property has been substantially rehabilitated or ownership has changed since the time of the flood, by a licensed Real Estate Appraiser which will be used in making offers to purchase;
4. Completing a review appraisal.



After this information is gathered, the City will:

1. Make offer to property owner;
2. Upon agreement for the acquisition of the property, order title information;
3. Work with State and Federal agencies and local entities, including FEMA and SBA, to obtain information about any assistance received from those agencies and their programs for each property being acquired to determine if a duplication of benefit exists;
4. Determine whether environmental investigation or testing is warranted for property to be acquired. Such investigation and testing may include a Phase I or Phase II Environmental Report to identify any contaminants or other environmental concerns. Decisions regarding environmental investigation or testing will be made in coordination with State and Federal agencies; and
5. Prepare closing documents.

2.7 Timing of Offers

The acquisition process will begin as funds are available and offers will be made as appraisals are completed and approved. Promptness of response and readiness of property title for sale will determine priority and time frame for closing.

2.8 Offer Form

Major elements of the City's offer are:

1. Purchase Price. The pre-flood appraised value if no substantial rehabilitation has been completed and ownership remains the same as at the time of the flood or the appraised current fair market value if substantial rehabilitation has been made. All appraisals will be performed by a certified real estate appraiser. A review appraisal must also be completed for each parcel acquired through this program.
2. Deduction from Purchase Price. As applicable, insurance proceeds, loans, repair grants, compensation in compliance with a court order or other assistance available





to help address damages to the structure that represent a duplication of payment for the real estate, property taxes and special assessments pro-rated to the date of closing, and other payments required to clear special assessments, liens, mortgages, fines, judgments, etc., will be paid prior to closing or deducted at the time of closing. The City will receive individual determinations by NDDDES, SBA, FEMA, etc., of any required deductions. Deductions will not be taken for the amounts the homeowner can verify with receipts that were expended on repairs or cleanup (no credit shall be allowed for the homeowner's own labor).

2.9 Conditions

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

1. 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 disaster recovery funds.
2. 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.
3. 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.
4. Abstract. The City is responsible for the cost of updating any abstract, title insurance policy, or other evidence of title.
5. Offer Expiration Date. The City will allow sixty (60) 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. It is the intention of the City to make as many offers as quickly as possible. Property owners are not obligated to accept the City's offer. In the event that an offer is not accepted in a timely manner, the





property owner may resubmit their intention to participate in the program to the City. Negotiations regarding the acquisition of the property will begin again, depending upon availability of funding.

6. Termination of Negotiations. Negotiations regarding the acquisition of the property may be terminated by the property owner or the City at any time prior to executing a purchase agreement.
7. Property Inspection. Upon acceptance of the City's offer, the seller will grant access to the City to inspect the flood-damaged property for personal property, hazardous materials, etc., that must be removed prior to closing.
8. 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. Cleanup costs associated with obtaining 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 CPR Part 58 will be completed and an environmental clearance received prior to a commitment to expend CDBG disaster recovery 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.

9. 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 such salvaged items.

If any structures, or materials from these structures acquired are resold, the City shall reimburse the North Dakota State Water Commission 75 percent of the sale price of these items within 60 days of the re-sale closing date, if the North Dakota State Water Commission has provided funds for the property acquired by the City of Minot.

10. Duplication of Benefits. All National Flood Insurance Program (NFIP) payments and FEMA minimal repair payments (for real property only) must be deducted from the buyout payment. Other insurance, SBA loans, repair grants, compensation in compliance with a court order or other assessments available to help address damages to the structure must also be deducted from the buyout payment. At NDDDES' or FEMA's direction, other assistance may also be deducted from the buyout payment. If the participant has received flood insurance which exceeds the assessed value of the structure, the participant will be offered the assessed land value only. No duplication of benefits will be deducted from the land value.
11. Subject to City Approval. The offer is subject to City approval of the form of offer and the specific offer terms for each property.
12. First-Come, First-Served. Final obligation of the acquisition funds shall occur at the time of offer and acceptance, on a "first-come, first-served" basis. Ten percent of the funds will be set aside for hardship cases.
13. Removal of Structures. All homes acquired with North Dakota State Water Commission funds will be removed within six months of closing date.
14. Termination or Breach of Purchase Agreement. If the seller terminates the purchase agreement or breaches its obligations contained in the purchase agreement, liquidated damages in the amount of \$2,500.00 will be imposed upon the seller.

3.0 Process After Offer is Accepted

Prior to closing, the following will be undertaken:





1. The seller will provide the City with any abstract of title or title insurance in the seller's possession.
2. The City will update the abstract or title insurance policy.
3. If not available from the seller, the City will determine whether an abstract of title or title insurance will be required. If determined to be necessary, the City will order an abstract or title insurance or other title information. The cost of such evidence of title shall be the responsibility of the City.
4. The City will make a determination of relocation benefits available to the owner and/or tenant, as appropriate.
5. The City will order any title searches, abstract work, title opinion or title insurance, and will provide forms of affidavits, releases and other necessary closing documents.
6. Upon receipt of the necessary closing and title-clearing documents from the seller, the City will prepare a closing statement and schedule the closing. The City will undertake any necessary property inspections.
7. The City will 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.

4.0 Acquisition Staff

CDM Smith has subcontracted with the law firm of Swanson & Warcup, Ltd.; and O. R. Colan Associates, an Acquisition and Relocation firm, and will assist the City in the acquisition process. Additional acquisition staff may be designated or contracted with as needed. The acquisition staff will be available to answer questions.

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

5.0 Relocation Benefits

The City is offering this program as an involuntary acquisition and buyout. Both programs require appraisals and review appraisals and must follow applicable federal and state regulations. 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.

5.1 Replacement Housing Payment for 90-day Occupants (42 USC 4624)

Eligibility. A tenant 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, or down payment assistance, as computed in accordance with paragraph (c) of §24.402, if such displaced person:

1. 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 for acquisition of such property or for properties that have not been substantially rehabilitated and are being valued at the time of the flood, 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); and



2. Has rented, or purchased, and occupied a decent, safe, and sanitary 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:
 - A. For a tenant, the date he or she moves from the displacement dwelling; or
 - B. For an owner-occupant, the later of:
 - i. The date he or she receives final payment for the displacement dwelling; or
 - ii. The date he or she moves from the displacement dwelling.

5.2 Determination of Rental Assistance Payment

1. 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). Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:
 - 5.3** The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
 - 5.4** The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.
2. Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is:
 - A. 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);





- B. 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.
3. Manner of disbursement.
- A. Relocation assistance payments for residential tenants who are displaced as a part of the City of Minot's Community Development Block Grant for Disaster Recovery (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).
 - B. Whenever a payment is made for relocation assistance required to be 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 disperse relocation payments in excess of \$500 in three monthly payments, except when the rental assistance payment is \$500 or less. Where the rental assistance payment is \$500 or less, the payment will be made in two installments.

5.5 Down Payment Assistance Payment

- 1. Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under paragraph (b) of §24.402 if the person rented a comparable replacement dwelling. At the City's discretion, a down payment assistance payment that is less than \$7,200.00 may be increased to any amount not to exceed \$7,200.00. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 49 CPR §24.401(b) if he or she met the 90-day homeowner occupancy requirement. If the City elects to provide the maximum payment of \$7,200.00 as a down payment, the City shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment





as a 90-day owner-occupant under 49 CFR §24.401(a) is not eligible for this payment. (See appendix A, 49 CFR §24.402(c).)

2. Application of payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

5.6 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:

1. Actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations (ION) or for properties that have not been substantially rehabilitated and are being valued at the time of the flood, 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). A person is considered to have met the requirements as owner of displaced dwelling if the person meets the definition, "Owner of a Dwelling" at 49 CFR 24.2 (a)(20); and
2. Purchases and occupies a decent, safe and sanitary replacement dwelling that is not located in an Area "A" on the NFIP Flood Hazard map within one year of the later of:
 - A. The date the person receives final payment for the displacement dwelling; or
 - B. In the case of condemnation, the date of the court award of just compensation is deposited with the court; or
 - C. A comparable replacement dwelling has been made available to the person.

5.7 Determination of Replacement Housing Payment Owner

The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed \$31,000.00 (See also §24.404 and 42 USC 4623(a)(1)). 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 CPR 24.401(b) shall be the sum of:

1. The purchase price differential (49 CPR 24.401(c)). This is the amount by which the cost of a comparable replacement dwelling exceeds the acquisition cost of the displacement dwelling, and
2. Increased mortgage costs (49 CPR 24.401(d)), and
3. Incidental expenses described in (49 CPR 24.401(e)).

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.

5.8 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)).

1. The Comparable Dwelling lacks major exterior attribute (49 CPR 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.
2. Mixed-use and Multifamily Properties (49 CPR 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.
3. Insurance Proceeds (49 CPR 24.403(g)). To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with any real property damages or other loss to the displacement dwelling due to the 2011 flood shall be included in the acquisition cost of the displacement dwelling when computing the purchase price differential.



4. Owner Retention of Displacement Dwelling (49 CFR 24.401(c)(2)). 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:
 - A. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
 - B. The cost of making the unit a decent, safe and sanitary replacement dwelling; and
 - C. 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
 - D. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.
5. Partial Acquisition Leaves Buildable Remainder (49 CFR 24.403(a)(3)). 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.
6. Use of a currently owned, previously purchased dwelling, valuation of which will be on the basis of current market value.

5.9 Maintaining Tenure of 180-Day Homeowner

Owner of Entire Fee Interest. A 180-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).

Rental Assistance for 180-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 decent, safe and sanitary replacement dwelling, the replacement housing payment may be converted to purchase assistance.

5.10 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.

5.11 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 Disaster Recovery Grantees under HUD Appropriations Act, 2012 and 2013; 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.

6.0 Replacement Housing Requirements





All owners or tenants receiving the replacement housing benefits must relocate to housing units that are decent, safe, and sanitary 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 decent, safe, and sanitary 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.

7.0 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 Agency 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:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
 - A. The availability of comparable replacement housing in the program or project area;
 - B. The resources available to provide comparable replacement housing; and
 - C. The individual circumstances of the displaced person, or
2. By a determination that:
 - A. 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;

- B. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
- C. 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.

- I. The methods of providing replacement housing of last resort include, but are not limited to:
 - A. A replacement housing payment in excess of the limits set forth in §24.401 or §24.402 and 42 USC 4623(a) & (a)!. A replacement housing payment under this section may be provided in installments or in a lump sum at the City's discretion.
 - B. Rehabilitation of and/or additions to an existing replacement dwelling.
 - C. The construction of a new replacement dwelling.
 - D. 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.
 - E. The relocation and, if necessary, rehabilitation of a dwelling.
 - F. 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.
 - G. The removal of barriers for persons with disabilities.

8.0 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, as the



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City determines to be reasonable and necessary. The displaced person may choose a payment for actual reasonable moving and related expenses, or a fixed payment for moving expenses.

1. Actual Reasonable Moving and Related Expenses (49 CFR 24.301(g)(1)(7)). 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).
2. Fixed Payment for Moving Expenses (49 CFR 24.302) - 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.

9.0 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 percent and CDBG provides 25 percent, 75 percent of the program income will go to the North Dakota State Water Commission and 25 percent to CDBG.

10.0 Appeals

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.

11.0 Term of Involuntary Acquisition Program

This Involuntary acquisition/buyout program is intended to begin on _____ and terminate on _____. Any property owner participating in the involuntary program must have an executed purchase agreement with the City prior to _____. However, the dates of the program are subject to availability of funding.



City of Minot

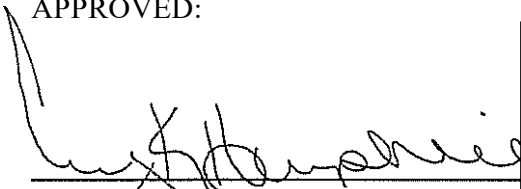
Following closing, the City, in its sole discretion, will determine whether any structures remaining on the property will be demolished or relocated for a future use.

12.0 Fair Housing Laws

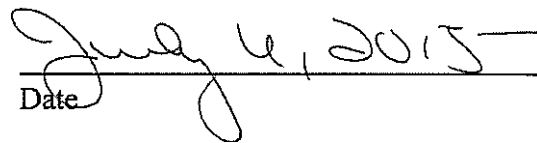
Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. These Acts and Executive Order 11063 make discriminatory practices in the purchase 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 an Agency to provide a displaced person with a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

APPROVED:



Cindy K. Herphill, CPA, MSM
Financial Director, City of Minot



Date





Attachment A: City's Appeal 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 appeal or counter offer. The information submitted by the property owner must include, at a minimum, the basis for the appeal or 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 information presented shall initially be reviewed by the City's acquisition staff. 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 the City Finance Director, or her designee, may authorize a revised offer. Alternatively, the acquisition staff may refer the property owner's information to an appeals panel which will be composed of two members of the Minot City Council and two residents of the City of Minot knowledgeable of real estate values. All members of the panel shall be appointed by the Mayor. Any information submitted by the property owner will be presented to the panel. Notice of a decision by the appeal board will be mailed to the property owner and provided to the designated acquisition agent within thirty (30) days of the board hearing. Any counter-offer or decision of the appeal panel or acquisition staff shall remain available to the property owner for not less than 30 days after which it shall be deemed to be withdrawn.

The Seller may contact the City of Minot if they wish to discuss filing an appeal.

Contact Person: NDR Program Manager
Address: P.O. Box 5006
Minot, ND 58702-5006
Telephone: (701) 857-4108

Written appeals shall be considered regardless of form. A written appeal must be submitted to:

Contact Person: Same as 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 an appeal is sixty (60) 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.

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: NDR Program Manager
Address: PO Box 5006
Minot, ND 58702-5006
Telephone No.: (701) 857-4108

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 appeal panel will consist of the City of Minot's Human Resource Director, CDM Smith Program Manager, and an Alderman appointed by the Mayor.

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:

Bobbie Ripplinger
Swanson & Warcup, Ltd.
720 Western Avenue
Minot, ND 58701
(701) 858-8040
briplinger@swlawltd.com