

## *City of Minot NDR Affordable Housing Underwriting Guidelines for Developers and Sub-Recipients*

The City of Minot received National Disaster Resilience (NDR) funds from the US Department of Housing and Urban Development (HUD) to support resilience and recovery projects identified in the City's NDR Action Plan. Minot identified three integrated NDR projects: reduce flood risk; increase the supply of quality long-term affordable housing and foster a robust and healthy economy. NDR Affordable Housing is dedicated to addressing the housing needs of low- and moderate-income households in Minot in accordance with HUD's NDR requirements.

The city has two options in carrying out the goal of creating resilient affordable housing through the use of NDR funds which are either through competitive RFPs resulting on developer contracts or through negotiated sub-recipient agreements with non-profit corporations.

Underwriting and Subsidy Layering Analysis for NDR projects will follow the federal OMB 2 CFR 200 standards both for developer and sub-recipient projects. These guidelines will be used by the City of Minot to ensure transparency and evaluate project costs and fees to determine if they are eligible in meeting HUD's necessary and reasonable cost justification standards; evaluate income, expenses, and risks to determine there is a reasonable rate of return both to cover long term project operating costs as well as an acceptable profit and/or positive income realization base depending on whether it is a developer or sub-recipient project all of which will meet the HUD requirement that CDBG-DR or CDBG-NDR funds are justified and necessary for the proposed project. The guidelines comply with applicable federal, state and local laws, and establish the standards for evaluating affordable housing projects funding by the City of Minot NDR Affordable Housing Program. These guidelines follow the underwriting requirements of the North Dakota Housing Finance Agency and HUD regulations.

Applicants for any NDR Affordable Housing Program funds must comply with all applicable federal, state and local regulations related to the construction, acquisition, rehabilitation or provision of housing. These regulations include, but are not limited to:

- Community Development Block Grant (CDBG) regulations and policies
- Title III of the Americans with Disabilities Act (ADA) of 1990
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- Davis-Bacon and Related Acts
- Identify of Interest Transactions
- Copeland Anti-Kickback Act of 1034
- Conflict of Interest Requirements
- Environmental Regulations

- The Lead-Based Paint Poisoning Prevention Act and Lead Safe Housing Rule
- Section 3 – Economic Opportunities for Low and Very Low-Income Persons
- Uniform Relocation Act – URA

Applications received by the City of Minot through competitive RFPs or proposals received from non-profits for the sub-recipient vetting process must comply with all applicable federal environmental regulations. If any funds including non-NDR funds are spent or committed to a development prior to the completion of the environmental process, the City of Minot cannot provide NDR funding for the project.

## Definitions

**AMI** – Area median income

**Adjusted household income** – gross household income limit that has been modified according to the number of persons residing within a dwelling unit

**Affordable housing** – In general, housing for which the household is paying no more than 30 percent of its income for gross housing costs, including utilities

**Cost Reasonableness** – HUD 2 CFR 200.404 regulations, the City must evaluate project costs to ensure they comply with reasonable cost regulations

**Eligible applicants** – For-profit developers, private non-profit developers, private non-profit subrecipients, public non-profits (housing or redevelopment authorities), and public entities (state or local government agency).

**Extremely Low Income** – households with incomes at or below 30 percent of the area median income (AMI) for Ward County, ND

**Fair Market Rents** – rental rates as established and updated periodically by HUD that are determined to be fair, affordable and appropriate rents for a geographical area

**Household** – all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (24 CFR 570.3)

**Housing Market Analysis** – A market analysis or study is required for projects that will receive NDR funding for acquisition, rehabilitation and new construction. A market analysis is an evaluation of the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The market study must have been completed within the past 12 months.

**Income** – all reference to “Income” shall mean the annual income as defined in 24 CFR 5.609 referred to as “Part 5 annual income”

**Low Income** – households with incomes at or below 80% of the area median income (AMI) for Ward County, ND

**Multifamily** – any building or group of buildings with four or more permanent residential rental units operated as a single housing project and at least twenty percent of the units are restricted for occupancy by persons or families of low and moderate income

**NDR Assisted Unit** – All housing units that benefit from financial assistance from NDR funding. The number of NDR assisted units in a project will be calculated based on the amount of NDR assistance in relation to the cost of construction and NDR funds can only be used for NDR eligible LMI units.

**Rent Restricted** – Rent including utilities and any tenant-based rental assistance that does not exceed the applicable published area median income limits which are calculated based on an assumed 1.5 persons per bedroom (single person in an efficiency).

**Subsidy Layering Analysis** – HUD establishes limits on the amount of federal funds that may be invested in affordable housing on a per-unit basis. Before committing funds to a project, an evaluation of all committed project funding must be conducted to ensure that the city does not invest any more NDR funds than necessary to provide affordable housing and the public funding does not unduly enrich the developer/subrecipient. Applicants must demonstrate that they have structured projects to maximize other available financing source to limit NDR funding to the lowest amount necessary to assure project feasibility

**Tenant Income Verification** – The property owner or its representative must verify the income of each tenant occupying an NDR assisted unit. The method used will be the Section 8 Part 5 income verification.

**Total Development Cost** – The all-in cost of developing the project including acquisition cost (if applicable), pre-development costs, hard and soft construction or rehab costs, financing costs, developer feed and reserve account capitalization is applicable.

**Very Low Income** – households with incomes at or below 50% of the area median income (AMI) for Ward County, ND

## Eligible Projects

To be considered for NDR funding a project must:

- be located within the city limits of Minot, outside of the new FEMA flood plain
- submit a complete and accurate project application and all required financial documentation. A complete Capital Needs Assessment (CNA) must be submitted identifying the useful life of major building systems that was prepared by an

independent, qualified third party, independent of the developer or the sub-recipient non-profit

- ensure at a minimum, that at least 51% of the units to be built or rehabilitated in the project will meet LMI rental standards with CDBG-NDR funds only eligible for use for the LMI units (note: NDR funds for any project shall only be used for LMI units and/or LMI percentage share of common area costs) to and leased by households with incomes at or below 80% of the Ward County Area Median Income (AMI) published by HUD on an annual basis. To find the most current income limits (IL) for Ward County, click on the HUD website

<https://www.huduser.gov/portal/datasets/il.html#2018> ; select the most current year; click on the button for “FY 2018 IL Documentation” (or the most current year available); from the drop down table select “North Dakota” and click on the state; then select Ward County from the drop down table and click on the county; finally click on the “View County Calculation” button. Rents must be affordable to households within the current income limits based on family size for Ward County. Tenant eligibility and rent rate compliance will be monitored annually.

- ensure that the affordable housing is properly managed and maintained throughout the affordability period to provide quality affordable housing for LMI residents and remains affordable for the longest period possible enforced through deed restrictions or similar instrument detailed in the project agreement and monitored on a yearly basis as set out in the development agreement or subrecipient agreement.
- meet and continue to meet all applicable HUD regulations and requirements in accordance with the City’s NDR contract with HUD
- project applicant must have control of the site proposed to receive NDR funds for rehabilitation or new construction activities. Site control must be documented at the time the application is submitted. The site must have access to all public utilities including roads, water, wastewater, stormwater retention as required, electric and/or natural gas, and broadband infrastructure defined as cables, fiber optics, wiring or other permanent infrastructure including wireless infrastructure, resulting in broadband capacity meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.
- the project applicant must demonstrate they have the capacity to implement the project
- prior to any award, the developer or sub-recipient must ensure that the developer, sub-recipient, contractors, or subcontractors are not on the federal or state debarred or suspended list.

- may be used for new construction of multifamily rental housing units if the need for new construction can be supported by verifiable data
- may be used for substantial rehabilitation of existing multifamily rental housing to preserve quality, long-term rent restricted affordable housing for LMI households in accordance with the cost per unit restrictions contained in an RFP, request for application, or other allowable procurement process
- may be used to support adaptive reuse of an existing non-residential building to create affordable housing units
- only permanent multifamily rental properties with a minimum of 4 units are eligible
- the costs for NDR supported affordable housing projects must meet cost principles and requirements outlined in 2 CFR 200 Subpart E and other related cost and price analysis required by HUD. HUD requires the City of Minot to evaluate cost reasonable for all NDR projects.
- projects awarded funding will be monitored annually to ensure compliance with HUD rules and regulations and the performance requirements established in the project development or subrecipient agreement. The property owner/manager will be assessed an annual fee for the project annual compliance monitoring and inspection. The City of Minot shall, itself or will select an agency to perform the monitoring and inspection of the project, except with respect to a sub-recipient which shall have the lead responsibility for such compliance monitoring. The project owner/manager or sub-recipient as applicable is required to provide annual financial information and documentation for this review. Failure to provide the required monitoring and inspection information can result in additional costs assessed based on added work by the city to assure compliance to the project owner/manager or sub-recipient as applicable and can result in the project loan being called.
- projects currently in a project pipeline with existing commitments of funding from NDHFA, LIHTC or other similar funding sources are generally not eligible unless the applicant can demonstrate that NDR funds will allow rents to be reduced from the proposed market rate levels to levels which are affordable to household at or below 80% of AMI and will remain affordable for a period of at least 20 years, or additional funding is necessary as leverage to be able to completely carry out the project to serve LMI households.

PLEASE BE ADVISED: Once an application from a RFP or a proposal for a sub-recipient has been received by the City of Minot, the project must follow all federal environmental regulations. During the review period, neither an applicant nor any participant in the development process or any of their contractors may commit or expend any funds, including non-HUD funds or undertake any activities having either an adverse environmental impact or limitation on the choice of reasonable alternatives. If any funds (public or private) are spent or committed to a development prior to the completion of the environmental process, the City cannot provide federal funding for the project.

## **Maximum NDR Award**

Minot may reject an application for NDR funds if the total development costs exceeds \$180,000 (current maximum per unit cost limit established by NDHFA) per unit for purposes of determining gap assistance from NDR funds. The City may waive this cost cap if the project requires atypical infrastructure or features such as historic rehabilitation elements, etc.

## **Reserves**

All projects will be required to establish and maintain a replacement reserve account for the term of the NDR loan. This account will be separate from the project's operating account and will be established in a federally insured financial institution or the Bank of North Dakota, to be adequately funded for the entirety of the project's Affordability Period. The initial balance of the Replacement Reserve account shall be an amount greater-than or equal-to the sum of three-hundred dollars (\$300) per unit for each unit within the project. Each year \$300 per unit (total units in the project building) will be deposited in the replacement reserve account, each year after year 1 the amount deposited will increase by 3% per year. These funds will not be used for operation or routine maintenance and upkeep expenses, the funds will only be used for replacement of short-lived capital assets (example replacement of roof, windows, heating systems, parking surface, or other similar capital asset). Written permission must be secured from the City of Minot prior to any decrease in the Replacement Reserve account's minimum.

All projects will be required to fund and maintain an operating reserve account in a federally insured financial institution or the Bank of North Dakota. The operating reserve account will be equal to two (2) months of operating expenses and hard debt service. This account shall be separate from the replacement reserve and operating accounts and must be fully capitalized during the development phase of the project as part of the total development cost. Operating Reserve funds shall be accounted for separately from other project operational funds.

## Eligible Project Activities and Costs:

### Fees-

Combined builder profit, builder overhead and general requirements cannot exceed 14 percent of the hard construction costs. A developer fee cannot exceed 15 percent of total development cost net of the developer fee, acquisition and any permanent financing costs. When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer Fee, Contractor Profit, Contractor Overhead and General Requirements may not exceed 15 percent of the total development cost, less the Developer Fee.

### Rehabilitation -

Housing rehabilitation includes essential repairs or improvements to meet local codes and Uniform Physical Condition Standards, major systems repair or replacement, accessibility improvements (ADA, section 504), abatement of hazardous materials, energy efficient improvements, and improvements to increase building resilience. Units to be rehabilitated that are currently occupied must meet URA and have a temporary relocation plan in place that will be followed during the project. New NDR affordable housing investments must create additional affordable housing units that will become rent restricted for the affordability period of the project as a requirement for the NDR investment as outlined in the development or subrecipient agreement.

NDR funds are provided to rehabilitate existing multifamily housing to preserve and improve the quality of affordable rental housing for qualified low and moderate income (LMI) households and ensure this affordable rental housing remains affordable to LMI households for a minimum of 20 years. A minimum of 51 percent of the units included in the proposal will be leased to and occupied by LMI households with NDR funds only eligible for use with the LMI pledged units. NDR funds may not be used to cover necessary general building improvements that benefit all building residents but NDR funds may be used to cover proportional share of such costs based on dedicated LMI units to total units in the project building (s). Detailed project costs must be provided. These project costs will be evaluated to determine if the costs are reasonable and comply with HUD's cost principles in 2 CFR 200 Subpart E. Only costs determined to meet HUD's cost reasonableness requirements may be included:

1. The remaining useful life of the proposed general building improvements must be reviewed in a qualified capital needs assessment and the proposed general building improvements must be within 5 years of or have reached or exceeded their expected useful life.
2. A subsidy layering analysis will be conducted in accordance with HUD requirements. NDR funding for a project may be adjusted based on the subsidy layering review.

3. NDR funds are disbursed on a pro-rate basis with other financing provided to the project and will be further defined in a project agreement if NDR funds are committed to the project. NDR funds are also only disbursed on a reimbursement basis. There is no advance of NDR funds permitted.

### **Soft Costs -**

Eligible soft costs include architectural and engineering fees, financing costs, credit reports, title insurance, appraisals, environmental reviews, and builder or developer fees. Project-related soft costs may be included on a limited basis and may not exceed those limits established by the North Dakota Housing Finance Agency. Soft costs will be reviewed and approved based on need determined during the underwriting review.

### **Ineligible Project Costs**

Refinancing of property; developer fees in excess of those allowed under North Dakota Housing Finance Agency HIF rules for 2015-2017 or as set forth in these guidelines whichever is lower; operating and management costs; costs associated with creating commercial spaces; and costs incurred prior to funding approval except as advised in writing.

### **NDR Funding**

All NDR awards will be structured as a forgivable zero-interest loan with repayment terms based on project performance requirements and terms determined on a project specific basis as necessary to achieve project feasibility. The term of the loan will match the term of the NDR affordability period in the project agreement.

The applicant or sub-recipient must meet the performance requirements detailed within their agreement to be eligible for forgiveness of the NDR loan. Annual compliance monitoring and will verify tenant incomes and rent rates to ensure compliance with requirements. If the developer or sub-recipient fails to meet performance requirements the NDR loan for affordable housing will become immediately due and payable based on the forgiveness provisions included in the agreement. A deed of trust or other similar document will be secured against the property for the length of the affordability period or term of the loan, whichever is longer.

The NDR loan may be subordinated subject to the review and approval by the City of Minot. Loans or loan commitment may not be assigned without the prior written approval of the City of Minot. If the assignment is approved, the assignee must assume all loan requirements and obligations including but not limited to the affordability requirements.

**Loan to value and Debt Coverage Ratio** - For new construction and rehabilitation projects, the loan amount awarded by the City, plus the principal amount of all loans with a senior claim to the subject property shall not exceed 100% of the "as-proposed" value. Generally, the minimum

debt service coverage ratio will not be less than 1.15 and not more than 1.3. All project not within the stated parameters may be reviewed on a case-by-case basis.

## National Objectives

HUD uses the term “Low to Moderate Income” (LMI) to refer to the national objective providing assistance to Low to Moderate Income persons for the CDBG-NDR program. The activities funded with CDBG-NDR funds identified herein must meet the LMI national objective and will be obligated to fulfill these requirements regardless whether the activities could qualify under another National Objective. All projects must provide at least 51% of the total project units to be restricted for LMI qualified tenants per NDR restrictions and NDR funds may only be used for such units and/or percentage share of common costs. The Developer/subrecipient must certify they will carry out the project funded with NDR funds to meet the low- and moderate- income requirements of CDBG-NDR as defined by HUD.

## To support resilience

The City of Minot and HUD requirements encourages implementation of green infrastructure principles and energy efficient practices. Tools for green infrastructure are available at the Environmental Protection Agency’s website; Indoor AirPlus website; Healthy Indoor Environment Protocols for Home Energy Upgrades website; and ENERGY STAR website: [www.epa.gov/greenbuilding](http://www.epa.gov/greenbuilding).

## Project Requirements

When an application or sub-recipient proposal is received, it will be reviewed for eligibility and accuracy. In order to be eligible for review, the application must be complete and include the information identified below. Application packages missing any of the required items after the application deadline will be deemed incomplete and returned to the application.

The City must be satisfied that those who will develop, own, and operate the project are familiar with and prepared to comply with, the requirements of the CDBG-NDR program including applicable HUD rules and regulations and applicable state and local laws and ordinances. In addition, the Applicant must demonstrate that members of the development team have the experience, ability, and financial capacity, in their respective roles, to undertake, comply, maintain and manage the project. The City may require the Applicant or Sub-recipient to provide financial statements as deemed necessary. Applicants with limited experience in the development, ownership and management of affordable multifamily rental property may partner with an experienced developer or sponsor. Misrepresentation of any information about the experience or financial capacity of any property team member will be grounds for denial.

The application must address the following project requirements:

1. Market Conditions – Applicants must demonstrate that the City of Minot has an unmet affordable housing need or shortage that proposed project will support. A detailed in-house or 3<sup>rd</sup> party market analysis may be submitted demonstrating the demand for the proposed project. The market analysis should have been completed within the previous 12-months. The market analysis should evaluate the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The analysis should determine the feasibility of the subject property rental rates and state conclusions as to the impact of the property with respect to determining existing housing needs. All data presented should reflect the most current information available and the report must provide source data information. Other acceptable methods to demonstrate an unmet need is data provided from such sources as the Minot Housing Authority, applicant or proposer's experience with other properties it owns or manages in Minot which have low vacancy rates connected to LMI housing, etc.
2. Demonstrated Site Control - Evidence the applicant has and will maintain from the beginning of the application review process, direct control of the site included in the application until the land is acquired if it is not already owned by the applicant. Applicant will provide a site concept plan for the project and exterior plan perspective showing how the project will look when developed.
3. Zoning – Evidence that the appropriate zoning will be or is in place to accommodate the project must be provided
4. Available Utilities – Evidence must be provided to demonstrate that appropriate utilities (water, wastewater, electric and/or natural gas, stormwater management if required, and internet) will be available to the project with adequate capacity to serve the proposed project
5. Financial Projections – Must include at a minimum: a 20-year pro forma financial statement for the project using the required vacancy rate identified in the application; sources and uses statement with adequate explanations; a project operating budget; square footage detail for the project; estimations of average annual unit utility costs; and a detailed development budget for the proposed project must be included in the application.

The reasonableness of the development costs and operating expenses in relation to other similar developments will be assessed in evaluating the financial feasibility of applications as well as the cost reasonableness and the subsidy layering review.

6. Capital Needs Assessment – A complete Capital Needs Assessment (CNA) must be submitted with any application package involving rehabilitation (including adaptive reuse projects). The CNA must be completed by a qualified, independent third party acceptable to the City, such as a licensed architect or engineer, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies. The assessment will include a site visit and a physical inspection of the interior and exterior of all units and structures. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than 50 percent of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life of a component is less than the term of the NDR loan, the application package must provide for a practical way to finance the future replacement of the component. The assessment will examine and analyze the following:

- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, stormwater drainage, and gas and electric utilities and lines
- Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing systems, and drainage
- Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors
- Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting, fixtures, fire protection, and elevators

7. Appraisal – Each application package involving acquisition costs or equity contribution of real estate which exceeds 15 percent of the total development costs, must include an appraisal of the subject property completed within 12 months of the date of the application by a state Certified General Real Property Appraiser, that support the value of the real property.

8. Project addresses Housing Needs of Individuals or Households with Low or Moderate Incomes – A minimum of 51 percent of the total units in each multifamily project must be reserved for households of low and moderate income defined as at or below 80 percent of the area median income (AMI) for Ward County as adjusted annually. NDR funds can only be used for the LMI dedicated units and the LMI units share of common area costs.

9. Need for Public Funds – The applicant must be able to demonstrate, as part of the application or proposal package, that the project would not be feasible without financial assistance from NDR funds. This will be evaluated in terms of the gap between cost of construction and the amount of debt the project could reasonably obtain and support. Applicant must have provided information outlining both the short- and long-term financial feasibility of the project based on the maximums as set forth in the General Provisions section. A 20-year financial pro-forma must accompany the application. Project proposals will be underwritten to achieve a target debt service coverage ratio of 120 percent.
10. Cost Reasonableness – HUD requires a project to be reviewed to determine if the cost of the project is reasonable. In determining reasonableness of a given cost consideration must be given to:
  - a. Whether the cost is a type generally recognized as ordinary and necessary
  - b. The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; federal, state, local, and other laws and regulations; and terms and conditions of the Federal award
  - c. Market prices for comparable goods or service for the geographic area
  - d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities
  - e. Whether the costs significantly deviate from established practices and policies regarding the incurrence of costs, which may unjustifiably increase the award's cost
11. Readiness to Proceed – Applicant or sub-recipient must have provided a schedule for completion of the project. Project schedules that show a completion date after November 1, 2021 may be eliminated due to NDR requirements for program completion.
12. Generation of Private Capital Contribution – Applicant or Sub-recipient must demonstrate the ability to raise capital for the project through private contributions. The value of any non-cash contributions must be documented through an “arm’s length” third party evaluation and written documentation.
13. Rehabilitation of Existing Habitable Structures – Applications or proposals involving the rehabilitation of existing structures that are not currently rent restricted to meet the needs of households at or below 80 percent AMI and require a minimum rehabilitation of \$20,000 in hard construction costs per unit to preserve the useful life and quality of affordable housing in Minot (not including cosmetic maintenance such as new paint, carpet, etc.) is allowed.

14. Special Needs Affordable Housing – Special needs housing must serve residents who are income qualified and meet other special need criteria including: elderly, those with mental illness, developmental disabilities, and the project must provide documentation that it meets the following requirements:

- a. Documenting a need for the type of special housing based on market demand and the findings of local social service agencies
- b. Third-party verification of the services appropriate to the targeted population
- c. Detailed commitment for a service agency to provide specific on-going services consistent with the needs of the targeted population
- d. Housing for residents with physical disabilities, evidence that the units for disabled tenants and the building meet the specific needs of the targeted population including accessibility features that may exceed ADA standards but make a project more functional for people with a disability
- e. Certification from an architect or Applicant that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines

15. An applicant or sub-recipient may request a waiver to allow submission of the CAN and/or appraisal at a later date if there are other funding sources in the project which would otherwise require the applicant to incur additional costs for multiple reports because of timing issues. In all cases, the CAN and appraisal will be required prior to issuance of a final financial commitment.

## Project Award Process

NDR funding will be provided in the form of a loan to assure compliance with all NDR project performance criteria including LMI affordability for a minimum of 20 years. The terms and condition for each project will be determined on a case by case basis based on HUD requirements and regulations. For the full affordability period of the project, the loan will function as a zero interest, forgivable loan secured by a Deed of Trust or similar legal instrument and the responsible project owner(s) or assigns must meet all project performance requirements established in the project development agreement. However, if the responsible project owner or assigns does not meet project performance requirements (affordable rents, affordability period, required compliance monitor, acceptable maintenance and operation of the development, etc.) for the full affordability period, the NDR loan will become due and payable to the City of Minot based on the terms established in the project development agreement.

An applicant or sub-recipient must submit a complete and accurate NDR Affordable Housing Application or proposal including all required financial documents. **Step 1:** Applications or proposals will be reviewed and an underwriting and subsidy layering review will be prepared. A

written underwriting and subsidy layering review will be provided to the City's Chief Resilient Officer. **Step 2:** The City's Chief Resilience Officer will make a recommendation regarding the application to the City Council. **Step 3:** The Minot City Council will action on the application **Step 4:** Once an application is approved by City Council the final development agreement or subrecipient agreement will be executed detailing all applicable requirement, loan details, performance requirements, and other applicable requirements and policies.

## Access to NDR Funds

Draw requests against an NDR financial award can be made for costs incurred upon firm commitment of all other funding sources such as construction financing. NDR funds will only be disbursed on a reimbursement basis. An agreement with recapture provisions and restrictions will be recorded by the City prior to release of any NDR funds. The borrower may request available NDR proceeds for payment or reimbursement of approved costs incurred toward the development of the project. Draw requests will be submitted on the Draw Request form and submitted with documentation supporting the expenses claimed, general contractor's sworn construction statement, and architect's inspection report.

Disbursement of up to 95 percent of the NDR proceeds may be made during construction of the project. Five percent of the NDR loan proceeds will be retained until project completion. Disbursement of retainage will be made upon satisfaction of all conditions including an inspection of the project and approval of the final draw request by Minot City Council.

## Compliance Monitoring

Owners of NDR-assisted properties must remain in compliance with their project agreement and program and HUD guidelines throughout the term of the NDR loan. The City of Minot will annually monitor all properties for compliance with NDR program requirements including those related to income and rent limits, revenues and expenses, cash flow, reserve accounts, insurance coverage, and property condition. The City of Minot may delegate monitoring to the Minot Housing Authority or other entity. Annual compliance monitoring will include a desk review of information and documentation provided by property owner and a property inspection and review of the project location.

On an annual basis, owners of NDR-assisted properties must provide the following information to the City of Minot or their designated compliance monitor:

- 1) Rent Compliance report
- 2) Project-specific financial statements including a balance sheet and statement of revenues and expenses (income statement) including documentation
- 3) Reserve account statements

- 4) Proof of property and liability insurance coverage
- 5) Documentation supporting current utility allowances being used

Fees will be assessed to property owners/managers that do not submit the required reports and documentation for the compliance monitoring and inspection and for projects determined to be in substantial noncompliance to cover the expense of additional monitoring. Project owners/managers that do not provide and required information and documentation for compliance monitoring and/or projects that are found to be in noncompliance will be subject to their project loan becoming immediately due and payable.

## Subsidy Layering

This analysis is used to determine the amount of investment needed to make a project feasible and is sometimes referred to as a “gap analysis”. It is used to evaluate the gap between approved costs (Uses) and available financing and other subsidies (Sources). Before committing funds to a project, the City will evaluate the project in accordance with HUD guidelines to ensure that the amount of NDR investment is needed to make a project feasible and will not unduly enrich the project owner. The City will evaluate:

- Debt capacity to ensure financing terms are reasonable and comparable to those available from other lenders
- Equity Contributions to assess the full spectrum of returns that are accruing to owners and investors. If it appears that the project is returning a higher level of return than is warranted given project risk and market conditions, then the City can require additional equity investment or reduce the level of NDR assistance.

HUD does not allow the investment of more funds than necessary to make the housing affordable for the project period. If the City determines the amount of NDR assistance and other sources exceeds the amount necessary to make the project feasible and viable for the affordability period, the City may: reduce the amount of NDR assistance; increase the number of NDR assisted units in the project or lower the target income levels and rents to be charged; or, revise the loan terms that bring the rate of return into line with reasonable standards.

Applicants or sub-recipients must demonstrate they have structured projects to maximize other financial sources thereby limiting NDR funding to the lowest amount necessary to assure project feasibility. Applicants must certify in their application whether additional assistance will be provided to the project, and if so, what type, source and amount of assistance will be provided.

Generally, for affordable rental housing development projects, funds provided from the contributions of private lenders and other funding resources including equity may not enough to cover the cost of developing and operating the project. HUD NDR funds typically fill the gap and serve as “gap financing”. The subsidy layering analysis is conducted to determine an appropriate

amount of NDR funds needed to “fill the gap”. The gap is influenced by several factors, some of which can be modified prior to a commitment of NDR funds, including:

- Level of physical improvements
- Rent levels and affordability
- Income levels being served (e.g. a target population of 60 percent of area median income could require less assistance than a target population below 30 percent of area median income)
- Payment terms of all funding including public and private funding
- The City’s funding will be the “last gap in” such that the City’s funding will be the first funding source reduced when there are net cost savings or increases in other sources

The City can deny NDR assistance if the applicant or sub-recipient refuses to make reasonable adjustments or to limit its return/costs in compliance with underwriting guidelines or if it appears that NDR funds are not needed to close a financing gap. While the City will identify the amount of subsidy needed through gap and other project analysis, the City must also determine that the amount of NDR assistance needed for program-eligible costs or activities.