Low Income Housing Tax Credit Program

2023 Allocation Plan

NORTH DAKOTA housing FINANCE AGENCY

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The information in this plan is provided as a general overview and should not be relied on for tax purposes. Individual applicants are solely responsible for compliance with Section 42 of the Internal Revenue Code, as amended. Each applicant will be responsible for the determination of the amount of tax credit for which they apply. Agency recommends that applicants seek professional advice prior to submitting an application.

NORTH DAKOTA
LOW-INCOME HOUSING TAX CREDIT PROGRAM
2023 ALLOCATION PLAN

I. INTRODUCTION

North Dakota Housing Finance Agency (“Agency”) is responsible for the administration of the Low-Income Housing Tax Credit (“LIHTC”) Program for the State of North Dakota. Agency developed a Qualified Allocation Plan (“Plan”) defining the process by which it will distribute.

II. GENERAL PROVISIONS

Agency may modify or waive any condition of this Plan, which is not mandated by the Code, on a case-by-case basis for good cause.

For purposes of this Plan, the Developer is the individual or entity to which the developer fees are paid for promoting the project. The Developer may or may not be the Applicant. The Applicant is either the owner of the project or the entity that has controlling interest in the ownership entity (i.e. the general partner, managing member).

A. **Discretion**: In the process of administering the LIHTC and other rental housing programs, Agency will make decisions and interpretations regarding applications and the Plan. Unless otherwise stated, Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations.

B. **Basis Boost**: Non-acquisition eligible basis may be increased by 30% for projects meeting any of the following conditions.

(1) The project is entirely located within a HUD-designated Difficult Development Area (DDA); or

(2) The project is entirely located within a HUD-designated Qualified Census Tract (QCT); or

(3) The project meets one of the following Agency designations:

- The project is designed to primarily serve special needs populations, (i.e. homeless or those requiring permanent supportive services); or
- The project targets 20% or more of the units at 30% of area median income or less; or
- The project is within tribal reservations, including the Trenton Indian Service Area; or
- The project entails new construction on in-fill lots with existing structures which either need to be demolished or require substantial environmental remediation; or
- The project is entirely located within a rural area without sufficient soft financing to be financially feasible in low market-rent areas. Proposed rents, including utility allowance, must be the lesser of Fair Market Rents or a minimum of 20% below LIHTC rent ceilings, either of which will be enforced through a land use restriction agreement (“LURA”). Developments with a project-based federal rent subsidy are not eligible; or
- The project is entirely located within an Opportunity Zone, as defined in Section 1400Z-1 of Code.

Applicants must provide a narrative explanation justifying the need to increase the eligible basis. Basis boost is not available on 4% acquisition LIHTCs. **The potential basis boost under paragraph II.B(3) herein does not apply to tax-exempt bond financed projects. The potential boost to non-acquisition basis under paragraphs II.B(1) and II.B(2) herein do apply to tax-exempt bond financed projects.**

C. **Maximum Developer Fee**: Developer fee will be limited to 15% of the project’s eligible basis. Fees paid to consultants will be included in this limitation. The developer fee for the acquisition portion of an acquisition/rehabilitation project shall not exceed 5%. The fees of all parties with an Identity of Interest with the Developer in the project will be taken into consideration when calculating the Developer's maximum fees. When the Developer and the contractor are the same or related entity, in addition to the fee limits stated above, the combined sum of Developer Fee and Builder/General Contractor Fees may not exceed 20% of eligible basis. All developer fees exceeding the established maximums will not be included in the eligible basis.

D. **Maximum Builder/Contractor Fees**: Builder/General Contractor fees may not exceed the following limits:

(1) Builder/General Contractor's Profit, 6% of hard construction costs

(2) Builder/General Contractor's Overhead, 2% of hard construction costs

(3) General Requirements, 6% of hard construction costs

Fees in one area may exceed the stated percentage if other areas are not at their maximum, so long as they do not exceed 14% collectively.

E. **Average Income (AI):**

(1) AI is only available on projects with an applicable fraction of 100% and no units which are unrestricted or designated above 80% AMI. Employee units are not included in the applicable fraction and are therefore permitted in AI developments.

(2) Projects with multiple residential buildings must answer "Yes" to question 8b on IRS Form 8609, thereby designating the development as a multiple building project.

(3) AI is not available on resyndication projects which have not yet completed their original Extended Use Period and exited the LIHTC Program.

(4) Section 142 of the Code, which regulates tax-exempt bond financing, was not amended to include AI as Section 42 was. Therefore, tax-exempt bond financed projects electing AI must meet the requirements of both AI as well as one of the other two minimum set-asides listed in this section.

(5) Designations within an AI project shall be floating and not fixed to specific units.

F. **Extended Low-Income Housing Commitment**: Prior to a final allocation of LIHTCs, the owner must waive their right to request a qualified contract under Code (IRC § 42(h)(6)(F)) and enter into an Extended Use Agreement which requires the owner and any successors to meet the applicable fraction of low-income occupancy for an extended use period of at least 15 years beyond the initial 15-year compliance period. The owner must record this agreement as a restrictive covenant.

G. **Compliance Monitoring**: Agency will monitor all LIHTC projects through the end of the Extended Use Period. A copy of the Agency LIHTC Compliance Manual is available on the Agency's website and is incorporated herein by reference.

Applicants, Developers, and Property Managers must remain in compliance with LIHTC program guidelines throughout the agreed upon extended use period. An Applicant, Developer, or Property Manager involved with an existing project that Agency determines is significantly out of compliance may not participate in new LIHTC projects until the issues are resolved to Agency's satisfaction. Relevant noncompliance includes both federal and state imposed LIHTC requirements (e.g. improperly funded reserves, unpaid fees, not meeting scoring criteria previously promised), as well as noncompliance within any other Agency funded or administered programs.

(1) Agency will charge each project an annual monitoring fee, currently set at \$50 per project plus \$40 per LIHTC unit. Projects with multiple buildings located in different towns (scattered site projects) shall pay a fee of \$50 per town plus \$40 per low-income unit. Agency may adjust the annual fee and assess additional fees to a project in substantial noncompliance to cover added costs of monitoring.

(2) Approximately 120 days before placing a project in service, the owner must request and hold a meeting with the individual(s) responsible for processing tenant income certifications and/or approving tenant files; the property management company; Agency compliance and development staff; and other providers of project funding which impose income or other restrictions on the project. The purpose of the meeting is to ensure all parties are aware of all applicable restrictions prior to any lease-up activities.

(3) Prior to issuance of the IRS Form 8609, the owner and on-site managers must attend or document that they have recently attended industry recognized training on management and compliance. Agency may require further follow-up training following significant or repeated noncompliance events.

H. **Restriction**: No one project will be eligible to receive a Conditional Reservation for more than an aggregate 25% of the annual LIHTCs available other than in the following circumstances:

(1) If during the regular allocation cycles, the only requests remaining are from applicants that have not

reached the 25% limit, or

(2) If, after the regular cycles, there are recaptured or unallocated LIHTCs, they may be allocated without regard to the 25% limitation, or

(3) At Agency's discretion to address an emergent need.

I. **Discrimination**: All housing receiving LIHTCs must be open to all persons regardless of race, color, national origin, religion, creed, sex, disability, or familial status.

J. **ADA, 504 and Fair Housing Acts**: Properties containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements and, if federal assistance is involved, must also comply with Section 504 of the Rehabilitation Act of 1973. The property must also comply with the Fair Housing Amendments Act of 1988.

K. **VAWA**: All housing receiving LIHTCs must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Guidance available on the Agency's website.

L. **Tenant Protections**: The ownership entity and management agent shall:

(1) expressly include reasonable accommodations in the application for tenancy; and

(2) not ask applicants/residents for medical or other protected information unless and only to the extent legally necessary; and

(3) use standard leases with the same rights available to, and responsibilities expected of, all households, including duration of tenancy; and

(4) ensure participation in any supportive services is entirely voluntary; and

(5) not give a preference based on either disability type, actual or perceived, or being a client of a particular provider.

M. **Reserve Accounts**: All projects must maintain and regularly fund Replacement Reserve account through the Extended Use Period. The Replacement Reserve requirement for projects primarily designed for;

(1) Seniors will be no less than $350 per unit per year, inflated at 3% annually; or

(2) General Occupancy will be no less than $400 per unit per year, inflated at 3% annually.

This account shall not be used for routine maintenance and upkeep expenses or for operating expenses. Project owners must provide Agency with a record of all activity in the Replacement Reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials. The ownership entity agreement must require that the Replacement Reserves may only be used for the funding of capital expenditures and replacement of building and site components and may not be distributed to owners or partners prior to the end of the Extended Use Period.

All projects also must establish and maintain, until the project has achieved a minimum of five years of stabilized operations, an Operating Reserve equal to a minimum of six months of projected operating expenses plus must-pay debt service payments and annual Replacement Reserve payments. This requirement can be met with an up-front cash reserve; a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee; or partnership documents specifying satisfactory establishment of an Operating Reserve.

Projects which have committed to a Rent Rebate for Homeownership shall maintain and regularly fund a Rent Rebate Reserve.

If applicable, a tax escrow account must be maintained at a federally insured financial institution or the Bank of North Dakota.

Each reserve account identified in this section must be accounted for separately within the project owner's accounting records and held at a federally insured financial institution or the Bank of North Dakota.

N. **Tax-Exempt Financed Projects**: Project applications with tax-exempt bond financing and 4% LIHTCs are subject to all requirements of this Plan except for the score requirements listed in Section VII of this Plan.

O. **Identity of Interest**: The Applicant must disclose all relationships, generally based on financial interests or family ties, with others involved in the project. This disclosure is required for all parties which:

(1) Have an ownership, development, or financial interest in the project, excluding limited partners with less

than a 15% ownership interest; or

(2) Have current or future management control of the project; or

(3) Have any current or contingent financial or management liability for the project, including guarantees, letters of credit, take out agreements or support agreements; or,

(4) Are involved in the project and have been debarred from any North Dakota program, other state program or any federal program.

This disclosure requires the names and addresses of all parties, including corporate officials, if applicable. Forfeiture of the reserved LIHTCs may result if this information is not adequately disclosed, or if the information changes.

P. **Disclosure of Interest**: The Applicant must disclose the names and addresses of all parties, including corporate officials, that have a significant role in the project, including but are not limited to the general contractor, all subcontractors whose aggregate contract will exceed 10% of the cost of project (excluding the acquisition of land), accountants, architects, engineers, financial consultants, and any other consultants.

Q. **Notice to Local Jurisdiction**: If required under federal law, Agency will notify the jurisdiction where the project will be located after application submission. Agency may utilize any responsive comments in its decision-making process.

III. TYPES OF DEVELOPMENTS

A. **Substantial Rehabilitation**: Minimum average rehabilitation threshold of $15,000 per restricted unit in hard construction costs.

(1) Agency may waive the minimum average rehabilitation threshold requirement if a Capital Needs Assessment supports a lower rehabilitation requirement.

(2) Projects involving rehabilitation or adaptive reuse must, upon completion, comply with the Agency Minimum Housing Rehabilitation and Property Standards (Property Standards), which are hereby incorporated into this Plan by reference. Rehabilitation projects, including adaptive reuse, must, at a minimum, cure any and all deficiencies identified in Section XV of the Property Standards upon completion. For projects which include acquisition and/or rehabilitation of occupied housing, any life-threatening health and safety deficiencies, as defined in the Property Standards, must be corrected immediately.

B. **Ineligible Projects**: Most residential projects qualify for tax credits. Ineligible projects include transient housing (i.e. housing leased for less than 6 months); projects of 4 units or less which are occupied by the owner or a relative of the owner; nursing homes; life care facilities; and mobile home communities

<u>Assisted Living</u>: Assisted living, or projects serving a similar purpose, are not eligible under this Plan.

Agency may reject an application for detrimental characteristics on or adjacent to the proposed project site unless a satisfactory remediation plan and budget are provided. Unsuitable sites include, but are not limited to, those that:

(1) Are within ½ mile of airports, industrial properties, pipelines, hazardous waste disposal or storage sites, sewage treatment plants, sanitary landfills, commercial junk or salvage yards, wastewater treatment facilities; or

(2) Are within 500 feet of frequently used railroad tracks, electrical substation, power transmission lines or towers; or

(3) Have unsuitable slope, terrain, or physical barriers; or

(4) Are in a flood hazard area or wetlands.

IV. APPLICATION PROCESS

Applicants must apply using Agency forms. Agency must receive the complete application, including all fees, by

5:00 p.m., Central, on the closing date to be eligible.

Application Cycle	Closing Date	Credits to be Allocated
1	September 30, 2022	$2,875,000 plus any additional amounts
2	September 30, 2023	Balance of available credits

If LIHTCs remain unallocated after the second cycle or additional LIHTCs become available, Agency may accept applications on a first-come, first-served basis during an open funding round.

Proposals for an allocation of 4% credits may be submitted to Agency at any time between January 1st and August 31st.

V. THRESHOLD REQUIREMENTS

To be eligible for scoring and ranking, the application must be complete and include the following information, unless waived by Agency for good cause:

A. **Demonstrated Site Control**: Evidence that the Applicant has and will maintain direct site control from the start of the application review process until the land is acquired, including a sketch plan of the site.

B. **Zoning Availability**: Evidence that acceptable zoning will be granted for the project as proposed.

C. **Infrastructure and Utility Availability**: Evidence that appropriate infrastructure (i.e. roads, curb, gutter, etc.) and utilities (i.e. water, sewer, electricity, natural gas, & broadband internet) are in place at the time of LIHTC application and have adequate capacity to absorb the proposed project.

   If infrastructure is not in place to the proposed site at the time of LIHTC application, a letter from the local jurisdiction must accompany the application indicating that no adequate infill opportunities currently exist in the community.

D. **Applicant Characteristics**: Agency must be satisfied that those who will own and operate the project are familiar with, and prepared to comply with, the requirements of the LIHTC Program in terms of:

   (1) Project ownership and development; and

   (2) Management experience; and

   (3) Level of knowledge of the LIHTC program demonstrated through preparation of the LIHTC application.

   Applicants new to LIHTCs must partner with a developer, sponsor, and or consultant included in a development team which received a LIHTC allocation from a federally approved allocator for a specific project and has placed that project in-service within the prior five years.

   An applicant who has not yet placed a LIHTC project in-service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

   Applicants who have been convicted of, entered an agreement for immunity from prosecution for or have pleaded guilty, including a plea of nolo contendere, to a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification, or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Agency may determine Applicants having an Identity of Interest with any debarred entity are ineligible.

   Agency may inquire to other state allocating agencies about the Applicant's or Developer's performance history. Negative performance may result in the application being ineligible.

E. **Financial Projections**: Applications must include a pro forma financial projection in the form of the Agency's Multifamily Application Exhibit A to the application. The rental income should reflect a minimum vacancy rate of 7%.

   Agency will assess the reasonableness of development and operating costs in relation to other similar developments.

   Agency will underwrite to achieve a target debt service coverage ratio of 1.20 (including the LIHTC allocation) and may reject an application with less than 1.10. Projects without hard debt service should achieve a target operating expense cushion of 10% to 15% (cash flow divided by operating expenses and reserve contributions).

F. **Ownership**: The Applicant must be either the Owner or Developer of the project. Applicants must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of the buyers. Failure to provide this information may result in forfeiture of LIHTCs.

   LIHTCs are reserved for the ownership entity identified in the initial application. A sale or transfer of a controlling ownership interest prior to issuance of the final allocation document requires an amended application, Agency approval and payment of a nonrefundable transfer fee of $2,500, or 3% of the annual credit amount reserved for the project, whichever is greater. The payment of this fee does not obligate Agency to approve the transfer.

G. **Subsidies**: The application package must include a signed certification as to the full extent of all federal, state, and local subsidies that are expected to apply to the project.

H. **Compliance with Fair Housing Act**: The application package must include a completed and signed Fair Housing Act Accessibility Checklist.

I. **Public Housing Waiting List**: The application package must include a signed written commitment from the Applicant to inform the public housing authority (PHA) of vacancies and to give priority to households on PHA waiting lists who apply for occupancy.

J. **Broadband Infrastructure**: Projects must install broadband infrastructure to all units and community rooms. Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent and integral infrastructure, including wireless infrastructure, resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download and 3 Mbps upload.

K. **Housing Need**: Applications must include a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, at the Developer's expense, by a disinterested party who is acceptable to Agency. The Market Study must demonstrate that there is sufficient sustained demand in the market area to support the proposed development, and that the development of any additional affordable units will not have an adverse impact on the existing affordable units in the market area. The Market Study must have been completed within six months of Application and must contain the National Council of Housing Market Analysts' (NCHMA) current model content standards unless Agency authorizes deviation from these standards. Agency may order a new market study at the expense of the Applicant.

L. **Capital Needs Assessment**: A Capital Needs Assessment (CNA) must be submitted with all application packages involving rehabilitation or adaptive reuse. The CNA must be completed by a competent, independent third party acceptable to Agency, such as a licensed architect or engineer. The assessment shall:

   (1) include a site visit and a physical inspection of the interior and exterior of all units and structures, 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; and

   (2) consider the presence of environmental hazards such as asbestos, lead paint and mold on the site; and

   (3) include an opinion as to the proposed budget for recommended improvements and identify critical building systems or components that have reached or exceeded their expected useful lives; and

   (4) include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate Replacement Reserve deposits on a per unit per year basis.

   The application must reflect addressing any component with less than 50% of the expected useful life remaining. If the remaining useful life is less than the affordability period of 30 years, the application package must provide for a practical way to finance the future replacement. The assessment will also analyze the following:

   (5) Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities,

water, sewer, storm drainage, and gas and electric utilities and lines; and

(6) Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage; and

(7) 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; and

(8) Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.

Application packages involving the demolition and new construction replacement of existing housing units must demonstrate the benefit of such activity over rehabilitation, including an opinion of cost of rehabilitation to assist Agency to determine the cost savings and/or other benefits.

M. **Ability**: The Applicant must demonstrate all members of the development team have the ability and financial capacity, in their respective roles, to undertake, comply, maintain, and manage the property. Agency may require the Applicant to provide financial statements. Any misrepresentation or failure to disclose team members or any identity of interest will be grounds for denial or loss of an allocation and may affect future participation in the LIHTC Program.

N. **Appraisal**: Owners must provide an appraisal of the subject property, completed by a state Certified General Real Property Appraiser prior to equity closing for projects which contain:

(1) acquisition costs exceeding 15% of the total project costs; or

(2) any source of Project-Based Rental Subsidy.

- Projects proposing the acquisition of land held, and through the proposed Credit Period and/or Extended Use Period shall remain held, in a Tribal Trust and are proposing a source of Project-Based Rental Subsidy from HUD's Office of Native American Programs (ONAP) shall be exempt from producing an appraisal prior to equity closing so long as all necessary parties concur with the omission of an appraisal for purposes of any Subsidy Layering Analysis.

O. **USDA Financing**: An application package involving existing USDA debt must include a letter from the regional USDA officer verifying the progress made on an initial transfer request.

P. **Self-Scoring**: The applicant must provide a self-scoring indicating the number of points being sought in each Scoring Category as well as a brief explanation of the eligibility for those points.

Agency will review application packages completeness prior to scoring. Applications missing any Threshold Requirement(s) after an Application Cycle's Closing Date will have a reasonable time to submit the missing Threshold Requirement(s); however, a 2-point scoring deduction will be assessed for each missing Threshold Requirement.

Applications may be submitted to the Agency during the calendar month prior to an Application Cycle's Closing Date for a one-time pre-review and feedback by the Agency. Applications received by the Agency within the calendar month of an Application Cycle's Closing Date will be considered an Initial Application.

Agency may reject an application if:

(1) The qualified basis per square foot exceeds 110% of the median qualified basis per square foot, not including basis boost, of selected projects in the previous two years.

- Maximum qualified basis per square foot: $186.39 ($169.44 x 110%)

(2) Unit size exceeds the square feet of living space (excluding garages and, in multi-level Single-Family Style Structures, interior stairwells) per unit. The Agency may consider basis for special circumstances such as adaptive reuse projects limited by existing architecture of the building.

	Multi-Level Single-Family Style	Multi-Family Style
1 bedroom	1,050	762
2 bedroom	1,150	936
3 bedroom	1,414	1,235
4 bedroom	1,586	1,360

VI. APPLICATION AND ALLOCATION FEES

A non-refundable processing fee of $500 is to accompany an Initial Application. This fee will not count toward the Allocation Fee.

Successful LIHTC applications will be assessed a non-refundable Allocation Fee of 10% of the LIHTC allocation due and payable as follows:

(1) Installment 1: Reservation: A Reservation Fee of 1% of the LIHTC Allocation shall be paid to the Agency prior to the Reservation of LIHTC(s) for the Project.

(2) Installment 2: Carryover: Projects not able to have all 8609(s) issued prior to December 15th of the LIHTC(s) allocation year shall pay to the Agency a Carryover Fee of 1% of the LIHTC Allocation prior to the Agency's execution of any Carryover Allocation Agreement.

- For Projects with tax-exempt bonds, Installment 2 shall be due upon issuance.

(3) Installment 3: Final Allocation: The balance of the Allocation Fee is due prior to the Agency's issuance of any 8609(s).

VII. PROJECT RATINGS

Applications must receive a minimum of 55 points as determined by Agency to be eligible for further consideration. Based on ranking, projects will be selected for Conditional Commitment. In the case of a tie between two or more projects, the project requiring fewer LIHTCs per unit will be selected first. Representations made by applicants will be binding and will be reviewed during ongoing compliance monitoring.

A. **Serves Lowest Income Groups .... Up to 45 points**

Points will be awarded to projects with a minimum percentage of units having gross rents based upon 50% or less of AMI. For purposes of this Scoring Category, gross rent is defined to include the tenant portion plus utility allowance.

Percent of Median Income on Which Gross Rent is Based

50% AMI		**40% AMI**		**30% or less AMI**	
% of Total Units	Points	% of Total Units	Points	% of Total Units	Points
20%+	10	20%+	15	50%+	45
10%<20%	5	10%<20%	10	40%<50%	40
5%<10%	4	5%<10%	5	30%<40%	20
1%<5%	3	1%<5%	2	20%<30%	20
0%<1%	0	0%<1%	0	0%<10%	0

All fractions of units are rounded up (i.e. 10% of 24 units is 2.4 or 3 units).

B. **Redevelopment and Revitalization .... 5 points**

A project will receive 5 points if it meets one of the following conditions:

(1) The project is located on a site considered by Agency to be a previously developed property.

(2) The project is in a QCT or city revitalization area established by resolution or other legal action by the city, and the development of the project contributes to a concerted community revitalization plan, including a Main Street Initiative plan. For purposes of this Plan, a concerted community revitalization plan is defined as a locally approved revitalization plan targeting specific existing areas or neighborhoods within the community for housing and economic development including the infill new construction or rehabilitation of housing. To qualify, the plan must be officially adopted by the local governing body, identify a specific time period, and apply only to a defined geographic area within the community. Local housing needs surveys, consolidated housing or economic development plans, short-term work plans, municipal zoning, or land use plans, or plans which are so broad as to encompass the entire community or so narrow as to encompass only the project's subject property do not qualify under this definition.

(3) The project is entirely located within an Opportunity Zone, as defined in Code Section 1400Z-1.

Adaptive reuse projects are eligible for points under this Scoring Category. Rehabilitation of existing habitable and occupied housing is not.

C. **Historic Properties.. 4 points**

Properties that are on the National Register of Historic Places and receiving Historic Rehabilitation Tax Credits, will receive 4 points.

D. **Tenant Support Coordinator .... Up to 10 points**

Projects which are committed to supporting tenants with special needs affecting their long-term housing stability and which create an environment that encourages and provides service coordination may receive up to 10 points.

(1) Tenant Support Coordinator ....5 points

Owner will provide, either through direct employment or by contract with an experienced third party, a dedicated Tenant Support Coordinator (TSC) for at least one hour per project unit per month. The TSC would be required to develop and maintain working relationships with tenants in the project. The TSC's role is to increase the ability of all tenants to maintain stability and uphold lease obligations through the following: facilitating provision of supportive services by connecting tenants with appropriate providers, identifying needs for assistance, and educating tenants on available resources.

(2) Tenant Support Coordinator and Medicaid-Approved Service Provider ....5 points

Owner will provide the TSC provisions in paragraph VII.D(1) herein and also enter into a formal letter of intent with one or more qualified service agencies with demonstrated experience providing housing stability services consistent with the needs of the project's residents. The service provider(s) must document their ability to process for Medicaid reimbursement and provide their Medicaid biller number issued by the State of North Dakota. The letter of intent must be detailed regarding the suite of supports and services to be made available to tenants who need and want them.

Projects receiving points under this Scoring Category must include tenant support coordination capable of the following, at a minimum:

- Support the person to understand and maintain income and benefits to retain housing by providing the following: and
  - Household budgeting and financial management; and
  - Assistance in applying for benefits related to housing affordability; and
  - Assistance with establishment of payee/guardian services as needed; and
  - Assistance with the income recertification process; and
  - Wealth and asset building initiatives.
- Support the building of natural housing supports and resources in the community; and
- Encouragement of community activity; and
- Facilitation of meetings with a tenant support team; and
- Identify and prevent behaviors that may jeopardize continued housing; and
- Coordination with parole and probation requirements; and
- Collaboration with law enforcement (i.e. the creation of safety plans); and
- Training on lease compliance, household management and best practices of successful tenants; and
- Promote health and wellbeing that enable tenants to retain housing by providing the following:
  - Connecting tenants with health providers; and
  - Assistance in securing and increasing employment; and
  - Assistance in securing childcare; and
  - Identifying educational opportunities in areas such as nutrition, education, and physical wellness; and
  - Parenting supports; and
  - Life coaching via peer support specialists; and
  - Facilitating connections to Home and Community-Based Care services.

A tenant selection plan must be provided as part of the initial application. The tenant selection plan must describe in detail how individuals and/or families with special needs will be identified, affirmatively marketed to, and assisted in renting units at the project.

Projects which received 10 points under this Scoring Category will be required to submit, prior to equity closing, a formal executed agreement with each provider identified in the letter(s) of intent.

Compliance monitoring activities will include:

- Confirmation of hiring or contracting with a TSC; and
- Confirmation of the provision of the services pledged at the time of LIHTC application, if applicable; and
- Review of marketing efforts targeted at special needs populations.

For purposes of this Scoring Category, tenants with special needs include individuals or families who:

- Suffer from serious or persistent mental illness; or
- Suffer from substance use disorders; or
- Have disabilities, including intellectual, physical, or developmental; or
- Are experiencing long-term homelessness, or are at significant risk of long-term homelessness;
- Are justice involved; or
- Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more “activities of daily living” without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under this Plan.

E. **Design Standards .... Up to 10 points**

(1) Elevator in each residential building. ....10 points

(2) No more than four units per outside main entrance. ....3 points

(3) A separate outside main entrance for each unit. ....10 points

Project’s may score points under only one Design Standard. Projects with multiple buildings must include any anticipated Design Standard, in which the applicant is seeking points, in all buildings.

F. **Universal Design .... Up to 12 points**

Projects which meet the minimum universal design features below are eligible for points in this Scoring Category based on a percentage of units. A maximum of 25% of the units may incorporate the universal design features.

(1) Greater-than or equal to 10.00% but less than 15.00% of the units...3 points

(2) Greater-than or equal to 15.00% but less than 20.00% of the units...6 points

(3) Greater than or equal to 20.00% but less than 25.00% of the units...9 points

(4) One point for each universal design unit which is two-bedroom or larger.............................Up to 3 points

Universal design units and all common areas must be wheelchair accessible and contain design features which may exceed the ADA standards, but which allow a project to be usable for the greatest possible percentage of the population. For purposes of this Scoring Category, the required minimum universal design features include, to the extent allowed by local building code:

- Roll-in or walk-in shower in at least one bathroom in the unit; and
- Any additional bathrooms containing a bathtub should include a transfer seat, grab bars, and a floor drain to handle water splashed onto the floor during transfer; and
- Front loading washing machines and dryers with accessible controls; and
- Dishwasher; and
- Lever handles on all doors and fixtures; and
- Security doors with automatic openers; and
- Accessible garbage dumpsters; and
- Covered outside entries with adequate lighting; and
- Kick plates on apartment doors to prevent damage from wheelchairs; and
- Apartment doors which are wieldy for persons using a wheelchair or a walker; and
- Hard surface flooring with maximum threshold heights of ½” beveled or ¼” square-edged; and
- Appliances with front controls; and
- Controls for the garbage disposal, range hood light, and exhaust fan located on the front of the lower

cabinets; and

- Lower-mounted upper cabinets with handles within reach of a person in a wheelchair; and
- Roll-under bathroom and kitchen sinks; and
- Lower-mounted mirrors/medicine cabinets; and
- Audio/visual alert doorbells; and
- Braille characters included to the left on all interior common area signage.

The project architect must certify the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines and include the universal design elements listed above.

G. **Green Communities.. Up to 7 points**

To be eligible to earn any points in this Scoring Category, applicants must submit a written development plan outlining the integrated design approach that demonstrates involvement of the entire development team. The plan should provide a statement of the overall green development goals, the expected outcomes from addressing those goals, and the rationale for choosing each of the green features. Green Communities criteria are listed and must be certified via the Multifamily Application Exhibit E.

Applications involving rehabilitation:

(1) 10 Green Communities' criteria..3 points

(2) 17 Green Communities' criteria..5 points

(3) LEED, Green Communities or ICC 700 National Green Building Standard Certification ....7 points

Application NOT involving rehabilitation:

(4) 10 Green Communities' criteria..1 point

(5) 15 Green Communities' criteria..3 points

(6) 20 Green Communities' criteria..5 points

(7) LEED, Green Communities or ICC 700 National Green Building Standard Certification ....7 points

H. **Rent Rebate for Homeownership..2 points**

Commitment to set aside at least 5% of the tenant paid rent for homeownership. The owner shall enter into a binding contract with all tenants of LIHTC units, at the tenant's initial occupancy, agreeing to a rebate of rent should the tenant household move directly into homeownership upon the tenant's vacancy from the Project. The accrual of rent to be rebated must be for the tenant's entire term of occupancy within a project. Any vesting period can be no longer than three years of continuous occupancy. Applications seeking points in Scoring Category K are not eligible for points under this Scoring Category.

I. **Tenant Ownership .... 1 point**

To be eligible to earn any points in this Scoring Category, all residential buildings in the Project must be individually surveyed, platted, and have separate physical addresses. Applications must include:

(1) a feasible plan that sets forth the process for transferring the property in whole; and

(2) the future purchase price; and

(3) homebuyer counseling efforts; and

(4) any other information requested by Agency.

J. **Housing for Individuals with Children.. 5 points**

At least 20% of the low-income units are three-bedroom or larger. Applications seeking points under Scoring Category K are not eligible for points under this Scoring Category.

K. **Housing for People 55 and Over.. 6 points**

Designed for and marketed to households consisting of individuals 55 years of age and over and include a community room with kitchen facilities for the use of the tenants at no charge. The marketing plan must be consistent with Fair Housing requirements for 55 and over housing.

L. **Preserve Existing Affordability.. Up to 10 points**

(1) State or federally assisted non-LIHTC project, including those with expiring Project-Based Rental

Assistance contract(s) for 50% or more of the units (within the next 36 months), which are at-risk of being lost from the state's affordable housing inventory. Projects at risk of losing federal financial assistance because of default on their federal contract. .... 10 points

(2) Existing LIHTC project entering its Extended Use Period within twelve months which did NOT waive its ability to opt out of the Extended Use Period .... 10 points.

(3) Existing LIHTC project entering in its Extended Use Period within twelve months which DID waive its their ability to opt out of the Extended Use Period .... 5 points

(4) Project has secured, at least conditionally, a transfer of Project-Based Rental Assistance under Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(bb)) .... 10 points.

Applications must provide a copy of all relevant documents as applicable including, but not limited to:

- HAP Contract; and
- Regulatory Agreement; and
- Filing documents of intent to opt out; and
- Loan documents that describe the ability to pre-pay the financing including required approvals and/or penalties; and
- Copy of most recent REAC, MOR, or RD inspection report or other evidence of physical deterioration that would threaten the HAP contract; and
- At least three market comparables for each bedroom size to indicate what market rents might be achievable at the project without the federal assistance restrictions; and
- Narrative describing the dissolution of current ownership/management entity; and
- Proof of 8(bb) transfer to the proposed project.

M. **Committed Leverage .... Up to 4 points**

An applicant who provides signed, firm commitments for contributions or incentives from local government, private parties and/or philanthropic, religious, or charitable organizations which are NOT in the form of an interest-bearing loan and excluding commitment from entities with an identity of interest or those with a significant role in the project.

(1) at least 1% but less than or equal to 5% of the total development costs, will receive .... 2 points

(2) at more than 5% but less than or equal to 10% will receive .... 3 points

(3) greater than 10.00% .... 4 points

(4) Applications proposing twin-financed 9% LIHTCs and 4% tax-exempt financing .... 2 points

N. **Geographic Location**

No more than two projects will be approved in any one city during an application round. Projects approved under a prior year which are receiving an additional allocation of LIHTCs in the current year will not trigger this limitation in the current year.

VIII. SET-ASIDES AND TARGETED AREAS

Agency has established the following set-asides and targets:

A. **Non-Profit Participation:** Ten percent of the state's LIHTC allocation will be set aside for projects involving non-profit organizations. To qualify for this set-aside, the Applicant must be a qualified non-profit organization (501(c)(3) or 501(c)(4) status) which has as an exempt purpose of fostering low-income housing; owns an interest in the project (directly or through a partnership); and materially participates on a regular, continuous, and substantial basis in the development and operation of the project throughout the compliance and extended use periods. Ownership interest is defined as a minimum 50% general partner position in a limited partnership.

The initial application must include:

(1) Explanation illustrating that the non-profit has been actively involved within the community as a non-profit organization; and

(2) Explanation outlining the rights and responsibilities of the non-profit organization including the right of

the non-profit to purchase the project in the future; and

(3) Information to show that the non-profit organization is not affiliated with, or controlled by, a for-profit individual or organization.

The highest-ranking non-profit application will be considered a part of the non-profit set-aside. Other non-profit applications more than the set-aside must compete with eligible "for-profit" applications.

B. **Native American Set-Aside:** Agency shall award the highest-scoring qualified application in the first application round located within North Dakota Indian Reservations or on Tribal land (either held in trust or fee-simple), subject to the limits identified in Section II.H herein.

C. **New Development/Preservation Parity**: For purposes of this section there are two construction types:

(1) New Development is the new construction creation of new housing units (including adaptive reuse).

(2) Preservation is the substantial rehabilitation or same-site replacement of existing occupied housing.

Applicants may contact Agency with any uncertainty as to a proposed project's construction type.

Following the selection of a new development project under the non-profit and Native American set-asides, the highest-scoring qualified preservation project will be eligible for a conditional commitment of LIHTCs. If instead a preservation project is selected under the non-profit set-aside, all remaining unselected project applications will, following the selection of a project under the Native American set-aside, compete for the remaining available LIHTCs.

IX. CREDIT AWARD PROCESS

Agency will review applications and make awards. Thereafter, the following definitions shall apply:

Conditional Commitment: Agency commitment to reserve LIHTCs for the Applicant conditioned upon the Agency's receipt of required items and documentation within an allotted timeframe.

Reservation: Agency commitment that LIHTCs have been reserved for the Applicant.

Carryover Allocation: Agency's allocation of LIHTCs to the Applicant. Agency shall file an IRS Form 8610.

Final Allocation: Agency's final verification of Applicant's compliance to the Plan's requirements, completion of the development of the Project, and all building(s) have been Place-in-Service. Agency shall file an IRS Form 8609.

A. **Conditional Commitment**: Agency will determine the amount of LIHTCs to be conditionally committed, may not equal the amount requested in the application, and issue a Conditional Commitment which shall expire on a date identified within the Conditional Commitment and shall not be less than 60 days.

Agency will underwrite applications to determine compliance with federal requirements and the policies in this Plan within 30 days of an Application Cycle's Closing Date.

4% Tax Credit Applications with Tax-Exempt Bond Financing

Upon satisfactory review of the application, Agency will issue a letter in accordance with Internal Revenue Code Section 42(m)(2)(D) stating the preliminary amount of 4% LIHTCs Conditionally Committed to the project.

B. **Reservation**: Upon receipt of the items identified in the Conditional Commitment for Agency to issue a Reservation (Reservation Package), Agency may issue a Reservation of LIHTCs. Applications containing material changes may be ineligible.

Agency shall receive a fully completed Reservation Package prior to the expiration of the Conditional Commitment. A 10-day late submission window is available for Applicants to submit any missing items, however a late fee of $200 per calendar day, up to a maximum of $2,000, will be assessed and must be received by the Agency prior to the Reservation of the Applicant's credits by the Agency. If all required items are not received prior to the expiration of the 10-day late submission window, the Conditional Commitment will be allowed to expire, and all credits shall return to the Agency.

Late fees will not be allowed as an eligible cost in basis and are in-addition to the Allocation Fee.

C. Project Progress Reports: Owners must submit quarterly progress reports describing the Applicant's actual progress in comparison to the project development timeline and schedule submitted in the Reservation Package. Owners must disclose project development costs which have increased above the contingency provided in the application during the development and construction/rehabilitation of the project along with an explanation of how the gap has been or will be filled.

D. Carryover Allocation: Projects not able to have all 8609(s) issued prior to December 15th of the credit allocation year shall submit all items identified within the Conditional Commitment for Agency to issue a Carryover Allocation (Carryover Package) to the Agency. Upon receipt and acceptable review of the Carryover Package, Agency shall execute a Carryover Allocation Agreement and file IRS Form 8610.

   Agency shall receive a fully complete Carryover Package no later than the close of the credit allocation year's December 15th business day. A late submission window is available for Applicants to submit any missing items, however a late fee of $500 plus $200 per calendar day, up to a maximum of $3,500, will be assessed and must be received by the Agency prior to the last business day of the calendar year. If all required items are not received by Agency on or prior to the last business day of the calendar year, the Conditional Commitment or Reservation will be allowed to expire, and all credits shall return to the Agency.

   Late fees will not be allowed as an eligible cost in basis and are in-addition to the Allocation Fee.

E. Final Allocation: Agency shall receive all items identified in the Conditional Commitment for Agency to issue a Final Allocation (Final Allocation Package). Upon receipt and acceptable review of the Final Allocation Package, Agency shall provide the Applicant a copy of each IRS Form 8609 for review and execution. Applicant is responsible for the review and approval of all 8609's. If corrections are identified the Agency shall promptly correct and resubmit the 8609(s) to the Applicant. Applicant approved and executed 8609's shall be returned to the Agency for Agency's execution & a copy of the fully executed 8609 will be provided to the Applicant.

   Agency shall receive a fully completed Final Allocation Package no later than 180 calendar days after the last building is Place-in-Service. Late submission of a fully completed Final Allocation Package will result in the assessment of a late fee of $200 per calendar day. The Agency shall receive all assessed late fees prior to the issuance of any 8609 for a Project.

   For projects intending to Place-in-Service in the year of allocation and do not intend to complete a Carryover Allocation, the Agency shall receive a completed Final Allocation Package on or prior to the end of the November 15th business day. If the Final Allocation Package is not received by the deadline or if the Final Allocation Package received is insufficient or missing any items required by the Agency to issue all required 8609's, the Applicant shall be required to complete a Carryover Allocation. If, for any reason, Agency is not able to issue all 8609(s) required for the Project prior to December 15th, the Applicant shall be required to complete a Carryover Allocation.

   If Agency is asked to reissue an 8609 after a fully executed copy has been provided to the Applicant, Agency may assess a processing fee of $50 per reissued 8609.

F. Credit Return or Cancellation: If, at any time after issuance of a Reservation of credits, an Applicant is unable to complete the project within the LIHTC Program's requirements, the Applicant shall voluntarily return all credits.

   If an Applicant is awarded additional credits from a subsequent allocation year for the same Project, it is the Agency's preference for the Applicant to voluntarily return all credits Conditionally Committed, Reserved, or Allocated for the Project in exchange for a new Conditional Commitment, Reservation, or Allocation, whichever milestone the returning credits have obtained, of credits from the subsequent allocation year. The new Conditional Commitment, Reservation, or Allocation shall not be less than the sum the credits returned plus the additionally awarded credits.

X. RESPONSIBILITY OF APPLICANT

The Applicant has the responsibility to abide by the representations made in the LIHTC application and in the LURA. Failure to abide by these representations may result in sanctions against the Applicant, including but not limited to, the inability to apply for LIHTCs in the future and participate in other Agency administered programs.

XI. RESPONSIBILITY OF AGENCY

Agency review of documents submitted in connection with the allocation is for its own purpose. Agency makes no representations to the Applicant or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing LIHTCs.

No member, officer, agent, or employee of Agency shall be personally liable concerning any matters arising out of, or in relation to, the allocation of the LIHTCs.

Projects awarded LIHTCs will be subject to compliance monitoring by Agency for the duration of the period of affordability plus the extended use period.

XII. MODIFICATION TO THE QUALIFIED ALLOCATION PLAN

To the extent necessary to facilitate the award of LIHTCs, Agency may modify this Plan from time to time, including minor modifications necessary to facilitate the administration of the LIHTC Program or to address unforeseen circumstances and waiving any conditions not mandated by the Code. For example, in the event of a major natural disaster, Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response. Agency will document any waivers from the established priorities and selection criteria of the Plan and will make this documentation available to the public upon request.

To the extent that anything contained in this Plan does not meet the minimum requirements of federal law or regulation, such law or regulation shall take precedence over this Plan.

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