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## Contractor's Guide

2025 – 2026 Multifamily Consolidated Request for Proposals  
2026 – 2027 Housing Tax Credits Funding Rounds

Last Updated: April 2025

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## **Chapter 1 – Overview**

### **1.01 Purpose**

This Contractor's Guide aids the Owner and Contractor in understanding the Contractor's role in the Minnesota Housing development process.

### **1.02 Development Process**

- A. The development process generally consists of the following:
  - 1. Formal Application
  - 2. Project Launch
  - 3. Pre-Construction Due Diligence
  - 4. End Loan Commitment or Construction Loan Closing
  - 5. Construction Administration
  - 6. Post-Construction Due Diligence
  - 7. Warranty Period
- B. The development process may vary based upon Minnesota Housing's funding sources being used for a construction loan versus an end loan and/or whether Minnesota Housing is the coordinating lender.

### **1.03 Other Information**

- A. This Contractor's Guide contains information regarding reasonable compensation for construction related services and describes requirements associated with construction related insurance, Contractor surety, contract compliance, and the Owner-Contractor Agreement.
- B. The Contractor may be selected via negotiated bid or competitive bid process. The Contractor, if selected via negotiated bid, is more likely to play a more active role in the earlier stages of the development process.
- C. Regardless of what stage in the development process the Contractor is selected, the Owner and selected Contractor must become familiar with all information contained and/or referenced in this guide prior to executing the Owner-Contractor Agreement.

## Chapter 2 – Formal Application

### 2.01 Purpose

This chapter provides information used to evaluate proposals and determine if funding program resources are eligible for the proposed use. The Minnesota Housing Multifamily Division currently offers two processes for Owners to request funding: the annual Multifamily Consolidated Request for Proposals (RFP) and other year-round funding.

### 2.02 Contractor's Role

If selected at the time of formal application, the Contractor's role during this stage generally consists of:

- A. Conduct a site visit and assist the applicant in formulating a preliminary estimate of construction costs.
  - 1. Cost estimates must be in a schedule of values format with major systems and components itemized.
  - 2. Cost estimates must include general conditions, winter conditions (if any), overhead, profit, and any other work typically included in the construction contract.
  - 3. Cost estimates cannot include construction contingency. However, with Minnesota Housing approval, they may include reasonable time-related inflationary allowance, winter conditions allowances, masonry repair allowances, roof-replacement underlayment allowances, soil corrections allowances, environmental remediation allowances, etc.
- B. For rehabilitation projects, assist the Owner and/or Architect in preparing a preliminary work scope.
- C. For new construction projects, provide basic value engineering input on schematic design concept options.
- D. Complete the Qualifications of Contractor (Minnesota Housing Form 209A) available on the [Multifamily Development Team Qualification Forms](#) webpage.
- E. Assist the applicant with completing Minnesota Housing's Multifamily application submittals.
- F. Participate in the development of sustainability strategies and documentation (the Intended Methods Worksheet, energy model, etc.). Guides and forms are available on Minnesota Housing's [Building Standards](#) webpage.

## **Chapter 3 – Project Launch Meeting**

### **3.01 Purpose**

The purpose of the project launch meeting is to allow the development team to present its specific proposal to Minnesota Housing, exchange ideas, identify shared goals, and allow Minnesota Housing staff to explain requirements and policies pertaining to the particular development.

### **3.02 Attendance**

Based upon Minnesota Housing's notification to the Owner that their project was approved for further processing, Minnesota Housing staff schedule the project launch meeting. Members of the development team, including the Contractor, are normally required to be present.

### **3.03 Topics of Discussion**

The topics discussed at the project launch meeting are tailored to each project and may include but are not limited to:

- A. Minnesota Housing's underwriting process
  - 1. Minnesota Housing financing awards and amounts
  - 2. Market need and unit mix
  - 3. Rent and income limits
  - 4. Maintenance and operating expenses
- B. Site-related Issues/Characteristics
  - 1. Site control
  - 2. Zoning issues
  - 3. Environmental review/remediation
  - 4. Soil Conditions
- C. Design and Construction-related Issues
  - 1. Minnesota Housing Staff Architect application review/feedback
  - 2. RFP selection points
    - a) Universal design
    - b) Enhanced sustainability (tiers/building performance)
  - 3. Minnesota Housing design review process
  - 4. Alternative design concepts
  - 5. Initial construction budget
  - 6. Procurement of construction
  - 7. Equal employment requirements and applicable prevailing wage requirements
  - 8. Contract Compliance and Equal Employment Opportunity (EEO) requirements



9. Section 3 and Black, Indigenous, and People of Color-Owned Business Enterprise and Women-Owned Business Enterprise (BIPOCBE/WBE) (if applicable)
- D. Due diligence/getting to closing
  1. Anticipated project schedule to get to closing
  2. Submittal process - portal
  3. On-going communication and project meetings
- E. Development team and overall project
  1. Characteristics and capacity of the development team
  2. Any unique project features or issues

### **3.04 Contractor's Role**

- A. If the Contractor attends the project launch meeting, their role generally consists of:
  1. For rehabilitation projects, if not involved during the application, become familiar with the proposed work scope and commenting on scale and scope of improvements.
  2. For new construction projects, if not involved during the application, review schematic design documents and develop a preliminary construction cost estimate or update the cost estimate provided at application.
  3. If not involved during the application, visit the site and be prepared to discuss any specific site issues having an impact on construction and/or construction costs.
  4. Discuss results and the need for any further analysis/assessment resulting from available Phase I or Phase II Environmental Assessments, asbestos assessments, lead-based paint assessments, radon tests, geotechnical exploration, energy audit, and/or sustainability (field testing).
  5. Discuss approach to construction procurement.
- B. Throughout the development process, additional working sessions involving the development team and Minnesota Housing staff may be required to resolve outstanding issues, if they arise.

## Chapter 4 – Contractor Selection, Bidding, and Compensation Determination

### 4.01 Purpose

The purpose of this chapter is to provide a framework for single prime Contractor selection, Contractor procurement (bidding versus negotiations), and compensation (general conditions, overhead, and profit).

### 4.02 Contractor Selection

- A. Minnesota Housing permits the Owner to either directly select (negotiated/comparative selection) or competitive bidding for awarding construction contracts.
- B. Direct Selection:
  - 1. If Contractor direct selection is used, it must be done early in the development process to establish the Contractor as part of the design team, and the Contractor must be expected to provide continuous value engineering in design.
  - 2. An attempt to competitively bid all work to at least three qualified subcontractors must be made; however, at a minimum, all work must be competitively bid to at least two qualified subcontractors for each division of work, including work to be performed by the Contractor's own workforce. This process will be documented with the submission of Minnesota Housing's Contractor Compliance Activity Report available on Minnesota Housing's [Post-Selection Materials & Forms](#) webpage.
- C. Competitive Bidding:
  - 1. Bidding may be open to all or restricted to a few Contractors, but three to five bidders is recommended.
  - 2. Minnesota Housing prefers soliciting competitive bids from a selected list of Contractors who are considered to be qualified for the specific job.
  - 3. If the Contractor selection is based upon competitive bidding and the lowest responsible bidder is selected, the general requirements, overhead, and profit limits may be waived, if approved by Minnesota Housing in writing.
  - 4. If the Contractor is selected after application through competitive bidding, the Qualifications of Contractor (Minnesota Housing Form 209A) must be submitted as well as any other Contractor submissions from previous processing stages as determined necessary by Minnesota Housing.

### 4.03 Contractor Compensation

- A. Net construction costs are construction costs (schedule of value line items) not including Contractor profit, general requirements, and overhead.

- B. Contractor's profit: The maximum Contractor profit allowed is 6% of net construction costs.
- C. General Requirements
  - 1. The maximum allowed is 6% of net construction costs.
  - 2. Cost items to be considered in this allowance include onsite supervision, construction site signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, routine general cleanup during construction, rubbish removal, dumpsters, construction material recycling, watchmen wages, all the builder's insurance (except builder's risk), temporary walkways, fences, roads, and other similar expenses.
- D. Contractor's Overhead:
  - 1. The maximum allowed is 2% of net construction costs.
  - 2. Minnesota Housing allows a Contractor overhead allowance based on a percentage of the net construction cost. Preconstruction services and cost estimating must be considered Contractor overhead.
- E. It is possible to exceed expenses in one area if other areas are not at their maximum. Minnesota Housing will allow the collective balance of Contractor profit, general requirements, and Contractor overhead to equal 14% of net construction costs (excludes construction contingency).
- F. The following construction costs may be schedule of value line items outside of and in addition to the profit, general requirements, and overhead, if approved by Minnesota Housing in writing.
  - 1. Extra expenses due to unique weather conditions such as winter heat, frost stripping, construction dehumidification, or de-watering
  - 2. Cost for a project-specific, third-party data cloud storage service
  - 3. Building permits, municipal plan review fees, sewer/water access charges, park dedication fees, and other special municipal construction-related fees/permit, etc.
- G. The cost of and contract for special inspections cannot be included under the Owner-Contractor Agreement.

#### **4.04 Identity of Interest**

- A. An Identity of interest exists between the Owner and the Contractor when:
  - 1. There is any financial interest of the Owner in the Contractor or any financial interest of the Contractor in the Owner.
  - 2. Any officer, director, or stockholder or partner of the Owner is also an officer, director or stockholder or partner of the Contractor.
  - 3. Any officer, director, stockholder, or partner of the Owner has any financial interest in the Contractor; or any officer, director, stockholder, or partner of the Contractor has any financial interest in the Owner.
  - 4. The Contractor advances any funds to the Owner.
  - 5. The Contractor takes stock or any interest in the Owner entity as consideration of payment.

6. Any relationship (for example, family) existing that would give the Owner or Contractor control or influence over the price of the contract or the price paid to the subcontractor, material supplier, or lessor of equipment.
- B. When the Owner and the Contractor have an identity of interest, in addition to the fee limits stated above, the combined sum of developer fee, Contractor profit, Contractor overhead and general requirements may not exceed 20% of the Total Development Costs (TDC), less the developer fee.
- C. The Contractor must submit a Contractor's Certificate of Actual Cost HUD Form 92330A audited by an independent public accountant in accordance with requirements established by the United States Department of Housing and Urban Development (HUD) as follows:
  1. At the end of construction after final Contractor application and certificate for payment, but before the final draw requisition for projects with one or both of the following:
    - a) Minnesota Housing's deferred funding
    - b) Minnesota Housing's first mortgage
  2. At the end of the project and before IRS Form 8609 issuance for 4% and 9% housing tax credits funded projects.

#### **4.05 Fixed Price/Stipulated Sum Agreement**

Regardless of what Contractor selection method is used, Contractor compensation must be in the form of a fixed price (stipulated sum). Refer to Chapter 5 (Owner-Contractor Agreement) of this guide for information regarding acceptable forms of agreements.

#### **4.06 Other Construction-Related Services**

Construction management, construction coordination, Owner construction representative services, or other similar services in addition to or outside the single, prime general Contractor construction contract (Owner-Contractor Agreement) must not be considered construction costs. Any additional services, if approved by Minnesota Housing in writing, must be included in the developer fee or some other development cost approved by Minnesota Housing prior to end loan commitment or loan closing.

#### **4.07 Federally Funded Projects**

- A. Davis Bacon and Related Acts (DBRA) may be triggered with federally funded projects. Confirm with the Owner, and/or the Architect if the project has triggered DBRA requirements. If the project has triggered DBRA, confirm that the required DBRA documents are included in the bid package before it is released for bidding.

- B. Section 3 and Black, Indigenous, and People of Color-Owned Business Enterprise and Women-Owned Business Enterprise (BIOCBCE/WBE)<sup>1</sup> compliance is required for federally funded projects. The Section 3 Guide and all attachments must be included in the final construction documents, typically the project manual.

#### **4.08 State Prevailing Wage**

Under certain circumstances, awards of Minnesota Housing funds may trigger state prevailing wage. Go to our [Prevailing Wage](#) webpage for applicability and reporting requirements. See Appendix B of this guide.

#### **4.09 Dual Wage Decision**

If both federal Davis Bacon and Related Acts (DBRA) and state prevailing wages are required, both wage rates must be included in the final construction documents, typically the project manual. The higher wage rate of the federal wage versus the state wage, must be paid.

#### **4.10 Design/Build Mechanical, Electrical, and Plumbing**

- A. A Design/Build Mechanical, Electrical, and Plumbing (MEP) delivery, whereas the applicable subcontractor's include engineering and design in their scope of work, may be allowed if preapproved by Minnesota Housing in writing. If allowed, the cost of all engineering as required by code must be included in the subcontractor's bid and/or the general contractor's lump sum bid.
- B. A required outline performance specification as well as the cost for said outline performance specification and any recommended peer review by a Minnesota licensed professional engineer must be included in the architect's scope of work and Owner-Architect Agreement. Refer to the Architect's Guide for more information and requirements for Design/Build MEP.
- C. The outline performance specifications and all Design/Build MEP work must meet all Minnesota Housing applicable Building Standards including (but not limited to) sustainability.

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<sup>1</sup> BIOCBCE/WBE is also known as Minority-Owned Business Enterprise and Women-Owned Business Enterprise (MBE/WBE).

## Chapter 5 – Owner-Contractor Agreement

### 5.01 Purpose

The Owner-Contractor Agreement reflects the goals and needs of the Owner and Contractor as established in the construction documents. It states the contract sum and its basis, describes the work, specifies the time of commencement and completion, and provides for payment to the Contractor. It also includes other provisions and incorporates by reference several other documents related to the work and makes them part of the Owner-Contractor Agreement

### 5.02 Owner-Contractor Agreement Requirements

- A. Prior to being executed, the Owner-Contractor Agreement must be submitted to Minnesota Housing for review and approval, with edits tracked.
- B. The Owner-Contractor Agreement must be the American Institute of Architects (AIA) AIA Document A101-2017 Stipulated Sum Agreement, or another industry standard form of agreement approved by Minnesota Housing in writing, that when fully completed and executed, is acceptable to Minnesota Housing in form and substance.
- C. The AIA Document A201-2017 General Conditions of the Contract for Construction must accompany the Owner-Contractor Agreement. This may be done by reference or exhibit attachment. Any modifications or extension of the general conditions must be via supplementary conditions or an attached AIA “Additions and Deletions” report.
- D. The Owner-Contractor Agreement must state the date of commencement of the work and the date the Contractor must achieve substantial completion of the entire work. Typically, the date of commencement is based on receipt of the Notice To Proceed and date of substantial completion based upon number of calendar days from commencement.
- E. The Owner-Contractor Agreement must stipulate a contract sum (lump sum). The Owner must pay the Contractor for the Contractor’s performance under the Owner-Contractor Agreement and all alternates, and/or unit prices, if any, of which the contract sum is based upon.
  - 1. Exception: Per Chapter 4 – Housing Tax Credits (HTC) Only Design and Construction Standards of our Rental Housing Design/Construction Standards, a lump sum agreement is not required. Other forms of contractor compensation (for example, cost of work plus a fee, or guaranteed maximum plus contracts) are allowed for 4% and 9% HTC Only funded projects.
- F. Contractor markup on all change order work, whether it is their own self-performed work or work by their subcontractors, must be negotiated between the Owner and Contractor and must be included in the Owner-Contractor Agreement. However, the markup must not be greater than the maximum combined profit, general requirements, and overhead as described in the contractor compensation section in Chapter 4 (Contractor Selection, Bidding, and Compensation Determination) of this guide.

- G. Minnesota Housing permits one progress application and certificate for payment (progress payment) per month. This must be submitted for review at a regularly scheduled monthly pay draw meeting and site observation. Once the Architect certifies the progress payment, the Owner, through the lender draw process, shall make payment of the certified amount to the Contractor. Payment is subject to Minnesota Housing and other lender/funder approval and release of mechanic liens for previously paid work. The amount of time needed to process each progress payment will vary depending on many variables, including funding characteristics. Minnesota Housing strives to minimize processing time for each progress payment. The Owner and Contractor must agree on a reasonable time for processing progress payments that is acceptable to Minnesota Housing and other funders, which is normally 30 days. If federal wage rate monitoring is required, 45 days may be necessary for processing time.
- H. Enumeration of specifications (project manual table of contents) and drawings (sheet index) must be done using exhibits prepared by the Architect, which must be the same as those attached to the Architect's Opinion Letter. Minnesota Housing loan closing staff must review and approve these exhibits, which are attached to the Architect's Opinion Letter, prior to being incorporated into Owner-Contractor Agreement.
- I. The Owner-Contractor Agreement must:
1. Include 5% retainage withheld from each progress payment for work completed and materials presently stored (on-site or off-site). No retainage is required for building permits, performance and payment bonds, Contractor paid builder's risk insurance, comprehensive insurance, and winter conditions.
  2. Reference all specifications contained in project manual, drawings, addenda (if any) and any other documents forming part of the contract documents.
- J. If Davis Bacon and Related Acts (DBRA) are triggered, the Owner-Contractor Agreement must contain the locked-in wage decision, HUD Form 4010, the Contractor signed Section 3 Clause and Minnesota Housing's Equal Employment Opportunity Policy Statement forms available on Minnesota Housing's [HOME National Housing Trust Fund](#) webpage. Confirm with Minnesota Housing that the correct forms are included in the Owner-Contractor Agreement before it is executed.
- K. If state prevailing wages are required, the Owner-Contractor Agreement must contain the locked-in state wage decision.
- L. Indemnification Clauses or Limited Liability Clauses, which are to the advantage of the Contractor, are not allowed. However, such clauses included in the boilerplate American Institute of Architect's (AIA) documents are allowed.

## Chapter 6 – Pre-Construction Due Diligence

### 6.01 Purpose

The time between the launch meeting and Minnesota Housing's end loan commitment or construction loan closing is referred to as Pre-Construction Due Diligence in Portal. This chapter explains submittal requirements and the process leading up to end loan commitment or construction loan closing.

### 6.02 Process and Submittals

- A. Throughout Pre-Construction Due Diligence, major features of the Construction Documents will begin to be finalized, including architectural drawings and specifications known collectively as the Construction Documents.
- B. The construction process begins with bidding or negotiating a contract with the potential Contractor. Once identified, the Contractor may begin to review Construction Documents prior to their completion to confirm that the work scope is in line with previous cost estimates.
- C. After Construction Documents have been completed and approved by the development team and Minnesota Housing, they must be forwarded to the Contractor for competitive bidding.
- D. A major milestone is Minnesota Housing's credit approval. The following submittals are typically required for Minnesota Housing underwriting staff to bring a project for credit approval:
  - 1. Competitively bid (also known as "hard bid") construction costs documented with a schedule of values reconciled with a current underwriting workbook.
  - 2. Draft versions of the following other Contractor due diligence submittals, satisfactorily uploaded to the Portal:
    - a) Building Permit and other plan review fees
    - b) Bid Package Checklist (for federally funded projects)
    - c) Construction Commitment Letter
    - d) Contractor Compliance Activity Report
    - e) Initial Contractor's application and certificate for payment (AIA G702/703) or other Minnesota Housing approved payment application
    - f) Contractor's Cost Breakdown (Schedule of Values)
    - g) Owner-Contractor Agreement (AIA A101) or other Minnesota Housing approved agreement
    - h) Sustainability Submittals (Intended Methods Worksheet, energy model, etc.)
    - i) Payment Bond (for construction loans)
    - j) Performance Bond (for construction loans)
    - k) Federal or State Prevailing Wage Certification (if applicable)
    - l) Evidence of Insurance – Contractor
    - m) Contract Compliance and Equal Employment Opportunity (EEO) requirements



- n) Section 3 and Black, Indigenous, and People of Color-Owned Business Enterprise and Women-Owned Business Enterprise (BIPOCBE/WBE) (if applicable)
  - o) Other Supporting Documentation or checklist items noted in the Portal
- E. Refer to the “Help Text” tab for each Portal checklist item for information regarding each item noted above.

## **Chapter 7 – End Loan Commitment or Construction Loan Closing**

### **7.01 Purpose**

The purpose of this chapter is to explain the difference between Minnesota Housing's end loan commitment and construction loan closing; explain the Contractor's role based upon an end loan commitment versus construction loan closing; and provide more detail requirements for key submittals such as Contractor's surety, Contractor's insurance, building permit, Assignment of Construction Contract, Supplement to General Conditions of Agreement Between Owner and Contractor, closing Contractor application and certificate for payment, and other documents.

### **7.02 Due Diligence Submittals**

Contractor due diligence submittals noted as Pre-Construction Due Diligence in Minnesota Housing's Portal must be updated, finalized, and uploaded for final staff review and approval prior to end loan commitment or construction loan closing.

### **7.03 End Loan Commitment**

- A. The end loan commitment outlines the requirements, conditions, and documentation for the end loan that the Owner agrees to follow and submit at the time of the end loan closing. Proceeds of the end loan will be used for reimbursement to the Owner and certain interim lenders for funds used to acquire, construct, and/or rehabilitate the development.
- B. The Contractor is not required to attend the end loan commitment or the end loan closing.

### **7.04 Construction Loan Closing**

- A. Construction loan closing will occur when Minnesota Housing is providing a construction loan that will be used to pay for construction and/or rehabilitation costs associated with the construction/rehab of the development.
- B. Loan documents and/or other legal documents are executed by the Owner and the Architect, Minnesota Housing, and other lenders (if applicable) at the time of the construction loan closing. Unless an early start is granted, the construction loan closing will be completed prior to the commencement of any construction work. Once the construction loan closing has been completed, all loan documents have been recorded, and priority pictures taken, Minnesota Housing will issue a Notice to Proceed.
- C. Minnesota Housing will schedule a construction loan closing once all of the 100% contract documents (plan review approved by Minnesota Housing Staff Architect) are submitted to and approved by Minnesota Housing; the construction contract has been awarded to the Contractor and has been submitted to and approved by Minnesota Housing; all construction due diligence has

been submitted to and approved by Minnesota Housing; all loan documents are considered in final form by all parties; and the draw has been finalized and approved by all parties.

- D. If Minnesota Housing is the coordinating/lender, the construction loan closing will be coordinated by Minnesota Housing. Following the construction loan closing, funds are disbursed in accordance with the Minnesota Housing loan documents executed at the construction loan closing.

## **7.05 Contractor's Surety (Payment and Performance Bonds)**

- A. Contractor's surety makes sure there will be sufficient funds to complete the work and that all sub-contractors will be paid under their sub-contracts.
- B. Contractor's surety is required for new construction and/or rehabilitation type projects requiring disbursement of Minnesota Housing loan proceeds during the construction phase (construction loan). Contractor's surety is not required if the entire Minnesota Housing loan is withheld until the end of construction (end loan).
- C. At Minnesota Housing's sole discretion, Contractor's surety may be waived if the construction contract amount is \$500,000 or less.
- D. Contractor's surety must be on Minnesota Housing's form of payment and performance (P&P) bonds unless otherwise approved by Minnesota Housing in writing. See Minnesota Housing's [Post-Selection Materials & Forms](#) webpage for P&P bond forms.
- E. Prior to construction loan closing, the Contractor must submit to Minnesota Housing evidence (draft copy of Minnesota Housing form of bonds) that payment and performance bonds (dual obligee) in amounts equal to 100% of the construction contract sum can be obtained.
- F. The cost of payment and performance bonds may be included in the construction contract sum unless specifically directed otherwise. One hundred percent reimbursement for payment and performance bonds is allowed at the first pay draw if this cost is itemized separately on the application and certificate for payment and schedule of values.

## **7.06 Insurance Requirements**

Visit Minnesota Housing's [Post-Selection Materials & Forms](#) for insurance requirements.

## **7.07 Building Permit**

The Owner or Contractor must provide evidence that building permit(s) is/are ready to be issued upon payment. The Owner must reconcile the cost of the building permit and associated plan review fees with the contractor's application and certificate for payment.

## **7.08 Construction Loan Closing Submittals**

- A. For construction loans (not applicable to end loans or housing tax credit only projects), the Contractor will be required to sign the following documents:

1. Assignment of Construction Contract
  2. Supplement to General Conditions Agreement Between Owner and Contractor
  3. Updated Construction Commitment Letter (if necessary)
  4. Updated other due diligence submittals as required
- B. Upon request, copies of benchmark documents are available for review.
- C. These documents must be executed at or prior to closing.

## **7.09 Contractor's Initial Application and Certificate for Payment**

- A. If the Contractor is requesting reimbursement at loan closing, the Contractor's initial application and certificate for payment (AIA Document G702 and G703), along with any necessary invoices for backup purposes, must be uploaded to Minnesota Housing's Portal. The Architect must certify the Contractor's application and certificate for payment.
- B. The contractor's initial application and certificate for payment at closing must be limited to building permit/plan review fees, performance and payment bonds, builder's risk insurance, and other costs approved by Minnesota Housing in writing. Other general requirements, mobilization, overhead, profit, preconstruction services, or other such costs must not be included in the first pay draw at closing.

## **7.10 Commitment and Closing Resources**

Minnesota Housing end loan commitment and construction loan closing forms and requirements are available on the Minnesota Housing's [Post-Selection Materials & Forms](#) webpage.

## Chapter 8 – Construction Administration

### 8.01 Purpose

Construction administration brings the bid documents and previous stages of the Minnesota Housing development process to realization as site improvements are completed in accordance with the construction documents.

### 8.02 Requirements

- A. Starting construction for a construction loan versus end loan entails the following requirements:
  - 1. Construction may not commence until after a Notice to Proceed has been issued by Minnesota Housing.
  - 2. If Minnesota Housing funding is needed for any loan disbursement during construction due to a construction loan, a loan closing must take place prior to issuance of a Notice to Proceed.
  - 3. If Minnesota Housing funding is not needed for any loan disbursement until after construction is completed due to an end loan, the loan closing does not typically take place until after construction is completed. In this case, the Notice to Proceed will be issued after an end loan commitment.
- B. During the construction phase, the Contractor is responsible for the supervision required to assemble materials and perform labor to achieve project completion in accordance with the approved construction documents.
- C. A pre-construction meeting is normally held following the loan closing.
- D. Minnesota Housing site visits:
  - 1. Whether or not the loan is a construction loan or an end loan commitment, Minnesota Housing must be permitted to enter the site to observe the work.
  - 2. It is essential that the project be constructed in accordance with the approved construction documents. Minnesota Housing's "Supplement to General Condition of the Agreement between Owner and Contractor," as executed by the Contractor and Owner (whenever Minnesota Housing is acting as coordinating lender and loan disbursement is needed during the construction phase) gives Minnesota Housing the right to enter the site and inspect the work, at any time and in its sole discretion.
  - 3. If at any time during the construction of the project, in the sole opinion of Minnesota Housing, the Contractor has failed to perform the work under the contract documents in accordance with the construction documents or has failed to utilize materials in accordance with the construction documents, Minnesota Housing may issue a Correction Order to the Contractor for correction of such items. This can be done without the approval of the Owner.

### 8.03 Contractor's Role

- A. The Contractor's role during the construction phase generally consists of the following:
1. Attend a pre-construction meeting. The purpose of the pre-construction meeting is to establish procedures to be followed during the construction phase of the development. The Owner, Architect, Contractor, Staff Architect, other funders, and labor standards officer (if applicable) must attend. Topics normally discussed include:
    - a) Monthly draw meeting schedule
    - b) Construction draw procedure
    - c) Handling requests for changes
    - d) Temporary project sign
    - e) Davis Bacon and Related Acts (DBRA) and/or state prevailing wage (if applicable)
    - f) Section 3 and Black, Indigenous, and People of Color-Owned Business Enterprise and Women-Owned Business Enterprise (BIPOCBE/WBE) (if applicable)
  2. Administer construction meetings:
    - a) Every two weeks is preferred; however, at least once a month in conjunction with the monthly application and certificate for payment draw meeting is required
    - b) Prepare and disseminate construction meeting minutes. Meeting minutes may be the responsibility of the Architect in lieu of the Contractor
  3. Call for the Architect's review and approval of shop drawings, product data, samples, and mock-ups.
  4. Provide supervision required to assemble materials and perform labor to achieve a completed project.
  5. To the extent necessary to accomplish the work:
    - a) Study and follow the construction documents and the laws/regulations affecting construction.
    - b) Cooperate with the Architect, other Contractors, and subcontractors.
  6. Select the means, methods, techniques, sequences, and safety procedures for coordinating/constructing the work on time and within budget.
  7. Coordinate construction tests and inspections performed by the third-party special inspector.
  8. Prepare a Contractor's application and certificate for payment (AIA Documents G702 and G703 or other Minnesota Housing approved payment application).
    - a) Note, the schedule of values in the application and certificate for payment must not change unless changed via a change order. The schedule values line items must remain as approved at loan commitment/loan closing, however the value may be adjusted in a "Current/Adjusted" column in the G703 Continuation Sheet.
    - b) If the application and certificate for payment includes reimbursement for materials stored off-site, the following must be attached to the respective application and certificate for payment:

- i. Material(s) invoice(s)
  - ii. Evidence of insurance covering materials stored off-site
  - iii. Location where materials are being temporarily stored
  - iv. Photos of stored materials, including project identification labels.
- c) All approved change orders included a pay application must be itemized as separate schedule of values line item, or noted/listed elsewhere in the pay application in a format approved by Minnesota Housing.
- 9. Pay for all the labor, materials, equipment, utilities, permits, and services necessary to accomplish the work.
- 10. Fulfill all contractual responsibilities for permits, bonds, certificates, and other written notices, authorizations, approvals, objections, and submittals.
- 11. Submit a Request for Information (RFI) to the Architect whenever documents are not clear in their requirements.
- 12. Construction contract modifications:
  - a) Changes to the construction contract must not be authorized to proceed without Minnesota Housing being aware of such changes
  - b) Wait for Owner and Architect formal approval before executing any design or material modifications
  - c) When significant design or material modifications occur that affect the construction cost, and/or when extension of the contract time is justified, the Architect must prepare a change order (AIA Document G701-2017).
  - d) All change orders must include a detailed breakdown of material and labor (quantity and hourly rates), cost itemization, general requirements, overhead, profit, and bond (normally prepared by the Contractor) showing how adjustments to the contract sum were determined.
  - e) Change orders must be approved by the Owner, Contractor, Architect, and the Minnesota Housing Staff Architect prior to being included in an application and certificate for payment.
- 13. Notify Minnesota Housing immediately in the event of Owner default.
- 14. Initiate the project closeout process, which generally includes:
  - a) Conduct a Contractor pre-punch inspection and provide a list of incomplete items (punch list) including monetary value of each.
  - b) Notify the Owner of any changes in insurance coverage.
  - c) Show compliance with all legal construction requirements and inspections as required for certificate of occupancy.
  - d) Submit record documents to the Owner showing recorded changes made during construction to drawings, specifications, addenda, etc.
  - e) Deliver replacement and maintenance stock of material, if specified.
  - f) Complete a keying schedule, make final changes to lock cylinders, and coordinate shifting responsibility for security to the Owner.

- g) Provide instruction and training to the Owner and their staff in the operation and maintenance of systems and equipment.
  - h) Thoroughly clean construction debris from all building and site areas.
  - i) Restore construction-related damaged finishes (site, exterior, and interior).
  - j) Submit the required guarantees and certificates of inspection.
  - k) Obtain certificate(s) of occupancy from the local municipality (if applicable).
  - l) Request architect's inspection for substantial completion.
15. Perform any additional duties associated with completing the work as required by the contract documents.
16. Pre-installation meetings. The Contractor must coordinate and participate in all pre-installation meetings required by the construction documents. This may include, but is not limited to, scheduling the meeting, ensuring all required parties are invited, ensuring all applicable subcontractors/material representatives are present, ensuring all materials required for the meeting are on site, and providing mock-ups as specified in the construction documents project manual.
- B. Once the Architect inspects the work and judges it to be substantially complete in accordance with construction documents, the Post-Construction Due Diligence and Warranty Period begin.



## Chapter 9 – Post-Construction Due Diligence

### 9.01 Purpose

The purpose of this chapter is to explain what documentation is typically collected for Post-Construction Due Diligence as a project nears construction completion. Post-Construction Due Diligence typically starts when the Certificate of Substantial Completion is issued by the Architect.

### 9.02 Requirements

- A. Once the Architect has determined the work is substantially complete and has issued a Certificate of Substantial Completion (AIA Document G704), the Contractor must work diligently to satisfy all remaining contractual obligations, including completing and/or correcting any remaining punch list items.
- B. The Contractor must not request the Architect's final inspection and a final application and certificate for payment until the Contractor is confident everything is in order, including the satisfactory completion of any Correction Orders issued by Minnesota Housing. The Staff Architect typically visits the site for final observations of the completed work.
- C. If portions of the work cannot be completed for an extended period after the work is determined substantially complete, the following options exist:
  - 1. If the project loan status must formally close, Minnesota Housing may approve disbursement of funds for uncompleted work (normally 1.5 times the estimated value) into an escrow account governed by terms of an agreed upon escrow agreement. Funds must be withheld by the title company until all work is complete and all terms of the escrow agreement are satisfied.
  - 2. Or, the construction contract and project loan status may remain open until all work is complete. If approved, in writing, by Minnesota Housing and other funding partners, retainage may be reduced to 1.5 times the estimated value of incomplete work, or another sum considered to be appropriate by Minnesota Housing and other funders.

### 9.03 Contractor's Role

- A. The Contractor's role during the Post-Construction Due Diligence phase generally consists of:
  - 1. Complete the work called for by the Owner-Contractor Agreement; including all punch list items and any Correction Orders issued by Minnesota Housing. If the project is a rehabilitation project, provide evidence that all permits are closed out.
  - 2. Request the Architect's final inspection of the work and a final application and certificate for payment.
  - 3. If requested, provide an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the Owner might in any way be responsible, have been paid or have been otherwise satisfied.

4. If applicable, provide certification of actual costs to Minnesota Housing.
5. If applicable, provide consent of surety to the final payment.
6. If applicable, provide all closeout information for Davis Bacon and Related Acts (DBRA) as well as Section 3, Black, Indigenous, People of Color-Owned Business Enterprise and Women-Owned Business Enterprise (BIPOCBE/WBE).
7. Provide final Operation and Maintenance (O&M) manuals, occupant manual, and orientation for Owner maintenance staff and residents.
8. Perform any other duties associated with the project close-out process, as required by the Owner-Contractor Agreement.
9. Coordinate with the Owner, Architect, and Minnesota Housing Staff Architect, as required, to help ensure all applicable Contractor related Post-Construction Due Diligence materials have been uploaded to Minnesota Housing's Portal and approved by Minnesota Housing. Those materials may include, but are not limited to:
  - a) As-Built Survey (ALTA/NSPS) if the Contractor has this included in the construction contract
  - b) Minnesota Housing Certificate of General Contractor and Owner form
  - c) Certificate of Occupancy
  - d) Final, As-built Energy Rebate Analysis
  - e) Environmental Close-out submittals (if applicable)
  - f) Executed Certificate of Substantial Completion prepared by the Architect
  - g) Escrow Agreement (if applicable)
  - h) Post-construction radon testing (if applicable)
  - i) Identity of Interest Cost Certifications (if applicable)
  - j) Sales Tax Rebate – Final Minnesota Department of Revenue Submittal Documentation (if applicable)
  - k) Sustainable Housing Requirements:
    - i. Intended Methods Worksheet
    - i. As-built ENERGYSTAR Certification or other required energy model
    - ii. And/or other certifications.
  - l) Sworn Construction Statement (final application and certificate for payment)
  - m) Other Contractor-related close-out submittals
- B. Once the Architect issues the Contractor's final application and certificate for payment, it typically marks the end of construction. Final payment may be withheld until all Post-Construction Due Diligence close-out checklist items are satisfactorily addressed, submitted, and approved by Minnesota Housing.
- C. At approximately eleven months following the date of substantial completion, a warranty inspection is typically required involving the Contractor. Refer to the warranty period of the development process in Chapter 10 (Warranty Period) of this guide.

## **9.04 Identity of Interest – Construction Cost Certification**

When there is an identity of interest between the Owner and Contractor, the Contractor must submit a Contractor's Certificate of Actual Cost HUD Form 92330A audited by an independent public accountant in accordance with requirements established by HUD as follows:

- A. At the end of construction after final Contractor application and certificate for payment, but before the final draw requisition for projects with one or both of the following:
  - 1. Minnesota Housing's deferred funding
  - 2. Minnesota Housing's first mortgage
- B. At the end of the project and before IRS Form 8609 issuance for 4% and 9% housing tax credits projects.

## Chapter 10 – Warranty Period

### 10.01 Purpose

The purpose of this chapter is to review the requirements and the Contractor's role during the warranty period, which is the period where the Contractor is obligated to correct defects through supplemental performance.

### 10.02 Requirements

- A. The warranty period includes the requirements associated with the general conditions AIA Document A201-2017 of the contract for construction and requires the Contractor to correct defective work within one year after the date of substantial completion.
- B. It also includes the statutory warranties providing protection mechanisms against faulty workmanship and defective materials beyond the one-year correction period, and any manufacturer warranties.
- C. The warranty period generally starts on the date of substantial completion for those portions of the work covered by the Certificate of Substantial Completion and remains in effect until all warranties expire.

### 10.03 Contractor's Role

- A. The Contractor's role during the warranty period generally consists of the following:
  - 1. Before the correction period expires, participate in an eleventh month review with the Owner (or Owner's representative) and Architect (if applicable) to determine if there are any problems associated with performance of specified materials, systems, and equipment, and secure any needed repairs or replacements as follows:
    - a) If any problem has resulted from failure in a material or system required by the construction documents, correct such defects or deficiencies per instructions from the Architect and/or Owner; or
    - b) If any problem has resulted from improper operation or maintenance of equipment, observe, and advise the Owner on proper operations and maintenance measures.
  - 2. After the correction period expires, correct any ongoing defect if it is determined to be due to noncompliance with the Minnesota Housing [Building Standards](#) as promulgated by statutory warranties.
  - 3. Perform any other duties associated with the project's warranty period as required by the Owner-Contractor Agreement.<sup>259</sup>

## Appendix A – Abbreviations, Acronyms, Terms, and Definitions

Abbreviations, acronyms, terms, and definitions noted here are for interpretation and applicability of all Minnesota Housing [Building Standards](#) (guides, standards, overlays, templates, and forms).

Table 1: Abbreviations, Acronyms, Terms, and Definitions

Term	Definition
20YCE	20-Year Capital Expenditure
AC	Air conditioning
Accessibility Analysis and Survey	A Minnesota Housing required report documenting an existing property's compliance with applicable accessibility codes and regulations based upon a site inspection and review of existing as-built plans in conjunction with new plans. Applicability and other requirements are based on funding sources.
Adaptive Reuse	Refers to the process of reusing an old site or building for a purpose other than which it was originally built or designed.
A&E	This is an abbreviation for Architect and Consulting Engineer.
AFCI	Arc-fault circuit-interrupter
AFUE	Annual Fuel Utilization Efficiency
Americans with Disabilities Act	42 U.S.C. 12131-12189
Architect	The Architect of Record and professional entity contracted with the Owner to provide architectural services. It is also the entity responsible for signing (sealing) documents per <a href="#">Minnesota Administrative Rules 1800.4200</a> .
Bath and Bathroom	A room within a dwelling unit where a water closet and lavatory sink are included. It may or may not include either (or both) bathtub and shower.
Bedroom	A Sleeping Area within a Dwelling Unit with all walls continuous to the ceiling, a closet, and a door.
Broadband Infrastructure	Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure – including wireless infrastructure with a minimum broadband speed of 25 Mbps download and 3 Mbps upload (if receiving federal assistance, speed will be mandated by the U.S. Department of Housing and Urban Development).
Building Standards	Minnesota Housing's minimum design standards applicable to projects funded by Minnesota Housing. Visit Minnesota Housing's <a href="#">Building Standards</a> webpage to view all Building Standards and documents. They include, but are not limited to: <ul style="list-style-type: none"> <li>A. Rental Housing Design/Construction Standards and Guides</li> <li>B. Architect's Guide</li> <li>C. Contractor's Guide</li> <li>D. Sustainability</li> </ul>

Term	Definition
	E. Environmental Standards F. Forms and Templates
CFM	Cubic Feet per Minute
CFR	Code of Federal Regulations
CNA	Capital Needs Assessment
COP	Coefficient of Performance
Construction Documents	Also know, as the “Contract Documents”, they are the written documents that define the roles, responsibilities, and work under the construction contract, and are legally-binding under the Owner-Architect Agreement and the Owner-Contractor Agreement. They include drawings (plans), project manual (specifications), addenda, change orders, and formal revisions thereof.
Consulting Engineer	A Consulting Engineer is a professional licensed in Minnesota who provides expertise and leadership in engineering disciplines that include civil, structural, sanitary, environmental, mechanical, electrical, geotechnical, chemical, industrial and agricultural engineering. The Consulting Engineer’s scope of work is included in the Architect’s basic services included in the Owner-Architect Agreement.
Contractor	The single prime general contractor.
Correction Order	A formal directive may be issued by Minnesota Housing if at any time during the construction of a project, the Contractor has failed to perform the work under the contract documents in accordance with the construction documents or has failed to utilize materials in accordance with the construction documents.
CO	Carbon Monoxide
Covered Multifamily Dwellings	As defined at 24 CFR §100.201
Critical Need(s)	Property condition deficiencies that if left unattended will likely jeopardize the property’s federal assistance.
Design/Build MEP	Design, construction, and procurement process whereas the applicable mechanical, electrical, and plumbing (MEP) subcontractor designs and builds their scope of work. The design work must be by a master electrician, master plumber, professional engineer licensed in Minnesota, or other entity allowed to do so per state statute.
Rental Housing Design/Construction Standards	Minnesota Housing’s Rental Housing Design and Construction Standards (RHDCS)
Dwelling Unit	A Dwelling Unit (DU) is a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping (separated Bedroom or Bedrooms), eating, cooking (full kitchen) and sanitation (3/4 or full bath).
EER	Energy Efficiency Ratio

Term	Definition
EF	Energy Factor
Efficiency Unit (SRO or Studio)	A single room (or resident) occupant unit providing complete, independent living facilities, including living, sleeping, and eating. Includes provisions for in-unit sanitation (bathroom) and kitchen facilities (refrigerator, sink, and range). May include a Sleeping Area but does not include a Bedroom. Also known as a single resident occupant (SRO) or studio.
EGCC™	Enterprise Green Communities Criteria (current applicable version unless noted otherwise)
Electrical Subcontractor	A subcontractor (to the Contractor) who performs electrical installation of above-ground and below-ground electrical work as required by an electrician licensed in Minnesota.
Electric Vehicle Supply Equipment	Also known as charging stations or charging docks. Electric Vehicle Supply Equipment (EVSE)'s are devices that provide electric power to a battery-operated vehicle and use that to recharge the vehicle's batteries.
ENERGY STAR (ES)	A U.S. Environmental Protection Agency program that helps save money, reduces financial risk from rising energy costs, and protects our climate through energy efficiency. ENERGY STAR labeled/qualified designation may include windows, doors, plumbing fixtures, lighting, and appliances. ENERGY STAR certified buildings follow either the New Homes program or Multifamily New Construction (ES MFNC) program.
Enhanced Sustainability	A building characteristic offered in the Consolidated Request for Proposal (RFP) Self-Scoring Worksheet for projects with enhanced sustainability features as defined in the Self-Scoring Worksheet.
ESAs	Environmental Site Assessments
ERA	Energy Rebate Analysis
Effectuated Remaining Life (ERL)	The number of years a building component may function as originally intended. It's established by subtracting the age of the component from the Expected Useful Life.
Expected Useful Life (EUL)	The number of years, based upon industry standards for which a building component is expected to function as originally intended.
Federal Housing Administration	The Federal Housing Administration (FHA) provides mortgage insurance on single-family, multifamily, manufactured home, and hospital loans made by FHA-approved lenders throughout the United States and its territories.
Full (Bath)	A bathroom with lavatory sink, water closet, and tub with or without a shower head.
GFCI	Ground-fault circuit-interrupter
Green Capital Needs Assessment	A physical needs assessment which integrates sustainable retrofits into capital improvement, modernization, and the financial planning process.

Term	Definition
HERS Rater	A Residential Energy Services Network (RESNET) certified individual required for ENERGY STAR certification program.
HOME	HOME Investment Partnerships Program
HSPF	Heating Seasonal Performance Factor
HTC	Housing Tax Credits also known as Low Income Housing Tax Credits
HUD	The United States Department of Housing and Urban Development
HVAC	Heating, ventilating and air conditioning system
ICC/ANSI A117.1	International Code Council/American National Standards Institute A117.1 is a nationally recognized standard of technical requirements for making buildings accessible.
Impact Fund	Minnesota Housing's Single Family Community Homeownership Impact Fund
IMW	Intended Methods Worksheet. A Minnesota Housing Microsoft Excel spreadsheet used to document compliance with the Minnesota Overlay and Guide to the Enterprise Green Communities Criteria. This may be found at Minnesota Housing's <a href="#">Building Standards</a> webpage.
IRS	Internal Revenue Service
KCMA	Kitchen Cabinet Manufacturers Association
Life-Threatening Items	In relation to the Uniform Physical Conditions Standards, Life-Threatening Items are deficiencies which call for immediate attention or remedy.
Limited Scope	A rehabilitation work scope considered by Minnesota Housing to be limited and not considered substantial or moderate rehabilitation based upon the cost, funding source, and number of Dwelling Units, number of Stories, or other purpose.
Mandatory Criteria	Enterprise Green Communities Criteria (as amended by the MN Overlay and Guide) which are required based upon construction type and other project characteristics.
Mbps	Megabits per second
Mechanical Subcontractor	A subcontractor (to the Contractor) who performs mechanical installation and engages in the business of heating, air conditioning, ventilation, refrigeration and associated sheet metal work.
Minnesota Housing	The Minnesota Housing Finance Agency
MN Overlay	Minnesota Overlay and Guide to the Enterprise Green Communities Criteria. Minnesota Housing's amendment to the Enterprise Green Communities Criteria (current applicable version unless noted otherwise).
Moderate (Mod) Rehabilitation (Rehab)	Refer to Chapter 3 of Rental Housing Design/Construction Standards for full definition and applicability.
MF	Multifamily



Term	Definition
Multifamily Accelerated Process (MAP)	A system that establishes national standards for approved lenders to prepare, process and submit loan applications for FHA/HUD multifamily construction financing. By using MAP processing, borrowers and lenders can save significant time during the loan application processing.
Multifamily Consolidated Request for Proposals	Minnesota Housing's competitive funding round, offered once per year, which provides a means of "one stop shopping" by consolidating and coordinating multiple multifamily housing funding resources into one application process. It deploys significant capital funds and is the primary mechanism that Minnesota Housing uses to award and allocate federal and state resources.
NSPIRE	National Standards for Physical Inspection of Real Estate
Notice To Proceed	The official letter from Minnesota Housing authorizing onsite construction work to start after construction loan closing or end loan commitment.
NHTF	National Housing Trust Fund Program
NO2	Nitrogen Dioxide
NSP	Neighborhood Stabilization Program (Single Family)
Optional (Criteria Points)	Enterprise Green Communities Criteria (as amended by the MN Overlay and Guide) which are selected by a project team for the purpose of meeting minimum optional criteria point thresholds.
Owner	Also referred to as applicant/developer/borrower and is the same entity for the purpose of reference in this guide. The Owner is the party with whom the Architect of Record and Contractor enters a contract.
Owner-Architect Agreement	The agreement for architecture and engineering services which identify or describe initial information, responsibilities of the parties, terms and conditions, scope of services, special conditions, and compensation. The agreement must be one of the American Institute of Architects (AIA) B-Series agreements approved in the Minnesota Housing Architect's Guide or other Minnesota Housing approved agreement.
Owner-Contractor Agreement	The American Institute of Architects (AIA) A101-2017 Stipulated Sum Agreement, or another industry standard form of agreement approved by Minnesota Housing for construction services. It is a legal document that sets the scope and terms of work for a construction project which includes start and completion dates, cost of labor and materials, contents of the work, dispute resolution, procedures for scope modification and other conditions.
Plumbing Subcontractor	A subcontractor (to the Contractor) who performs above-ground and below-ground plumbing installation for a construction project as required by a plumber licensed in Minnesota.
PNA	Physical Needs Assessment. An assessment similar to a Capital Needs Assessment, however a PNA is typically completed on Minnesota Housing

Term	Definition
	Physical Needs Assessment Template (PNAT) and 20YCE forms. Refer to Chapter 3 of RHDCS for full description.
PNAT	Minnesota Housing Physical Needs Assessment Template (PNAT). A Minnesota Housing template available at the <a href="#">Building Standards</a> webpage.
Portal	Minnesota Housing’s multifamily customer portal that uses the Salesforce cloud-based platform.
Predictive Cost Model	A Minnesota Housing developed software tool used to compare a project’s proposed costs with the expected costs based upon Minnesota Housing’s experience with similar projects and industry-wide standards. The model considers the following project specific attributes: activity type (new construction vs. rehabilitation), building type, unit sizes, gross square foot, amount of non-residential space, location, year built, garage type, and acquisition type (land or structure).
Preservation	Funding priority and policy focused on preserving properties with existing federal assistance (project based rental assistance or operating subsidies).
Project-Based Rental Assistance (PBRA)	A project-based rental assistance contract that applies to a specific property and is only available to qualified households while they live in an assisted unit in the property. If a household moves from the property or to a unit within the property that is not covered by the PBRA, the rental assistance does not move with them. PBRA generally requires a household to pay 30% of their adjusted income toward the rent payment, and the remainder is subsidized by the rental assistance program. PBRA may come from the U.S. Department of Housing and Urban Development under a Section 8 contract or project-based Section 8 vouchers, from USDA Rural Development’s Multifamily Housing Rental Assistance program, or from a state or local government rental assistance program.
Property Standards	Refer to 24 CFR Part 93, Subpart G, §93.301 (if receiving NHTF funding) and/or 24 CFR Part 92, Subpart F, §92.251 (if receiving HOME funding), including part (a) New construction projects and part (b) Rehabilitation projects.
Qualified Rehabilitation Specialist	A non-licensed professional (or entity) with at least five years of experience providing physical needs assessments and preparing project work scopes for multifamily housing rehab projects.
REAC	Real Estate Assessment Center
Rehab	Rehabilitation
Rental Housing Design/Construction Standards	Minnesota Housing’s design and construction standards applicable to multifamily rental housing developments.
RHDCS	Rental Housing Design/Construction Standards
Rural Development (RD)	A mission area within the United States Department of Agriculture which runs programs intended to improve the economy and quality of life in rural parts of the United States. RD promotes economic development by

Term	Definition
	supporting loans to businesses through banks, credit unions and community-managed lending pools.
SEER	Seasonal Energy Efficiency Ratio
Senior Unit(s) and Senior Housing	Dwelling units or housing developments intended for occupancy by seniors aged 55 or older.
SF	Single Family
Sleeping Area	An area used for sleeping which does not meet the definition of a Bedroom.
Sleeping Unit	Also known as congregate living or dormitory. A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation (bathroom) or kitchen facilities but not both.
Staff Architect	Minnesota Housing Staff Architect responsible for the review of funding applications, review of due diligence submittals, providing construction loan administration, and other duties to help ensure the project is following Minnesota Housing's Building Standards.
Story(ies)	Also known as level or floor. That portion of a building included between the upper surface of the floor and the upper surface of the floor or roof next above.
Substantial (Sub) Rehabilitation	Refer to Chapter 3 of Rental Housing Design/Construction Standards for full definition and applicability.
Supportive Housing	A type of multifamily housing property where supportive services are provided on-site for households with a history of homelessness and barriers to accessing and maintaining housing, thereby improving housing stability, employment, health, and many other qualities of life factors. Supportive Housing design features are applicable to all Dwelling Units in 100% Supportive Housing properties or to the fixed/non-floating Supportive Housing units in partially supportive properties.
Sustainable Building Guidelines	State building guidelines that apply to projects receiving Minnesota Housing Publicly Owned Housing Program general obligation bond proceeds.
Sustainable Housing and Sustainable Housing Standards	Minnesota Housing standards for new construction and rehabilitation that requires compliance with the Enterprise Green Communities Criteria and current version of the MN Overlay and Guide to the Enterprise Green Communities Criteria.
Tenant-Based Rental Assistance (TBRA)	Is provided to qualified households who can use the rental assistance in the private market. However, the rent must be at or below the payment standard for the program and the housing must meet program habitability standards. TBRA generally requires a household to pay 30% of their adjusted income toward the rent payment and the remainder is subsidized by the rental assistance program, although some programs allow participants to pay up to 40% of their adjusted income toward rent. TBRA may be administered by a local housing authority under the U.S.

Term	Definition
	Department of Housing and Urban Development’s Section 8 voucher program or by an administrator of a state or local program. A household may move from one property to another with their TBRA if the new property meets habitability standards and rent requirements; some TBRA programs may allow a household to “port” their TBRA to a unit located in a different county or state and some may limit the location of where the assistance can be used.
tCO2e	Metric tons of carbon dioxide equivalent
Townhome	A dwelling unit meeting the definition of a Townhome in the Minnesota Residential Code Chapter 2 – Definitions.
Type A Unit(s)	Dwelling Units or Sleeping Units which meet the Type A Unit requirements of the Minnesota Accessibility Code.
Type B Unit(s)	Dwelling Units or Sleeping Units which meet the Type B Accessible unit requirements of the Minnesota Accessibility Code.
UEF	Uniform Energy Factor
Universal Design	As defined in the Multifamily Self-Scoring Worksheet.
UPCS	HUD’s Uniform Physical Condition Standards
USDA	The United States Department of Agriculture
Vision/Hearing Impaired Unit	A dwelling unit designed to be adaptable for the installation of future communication features.
Visitability	Designs that allow persons with mobility impairments to enter a residence and comfortably stay for a duration. See <a href="#">Minnesota Statute 462A.34 Visitability Requirement</a> for dwelling units required to meet Visitability.

## **Appendix B – Legal Addendum**

### **1.01 Conflict and Control**

In the event of any conflict between the terms of this Addendum and the document to which it is attached, the terms of this Addendum will govern and control.

### **1.02 Fraud**

Fraud is any intentionally deceptive action, statement or omission made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into a contract with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the communication channels described in section 1.07.

### **1.03 Misuse of Funds**

A contracting party that receives funding from Minnesota Housing promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the recipient to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the recipient must use Minnesota Housing funds as agreed, and the recipient must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a recipient; or (2) a recipient cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the contract.

Any recipient (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the communication channels described in section 1.07.

### **1.04 Conflict of Interest**

A conflict of interest – Actual, Potential or Appearance of a Conflict of Interest – occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A Potential Conflict of Interest or Appearance of a Conflict of Interest exists even if no unethical, improper or illegal act results from it.

- **Actual Conflict of Interest:** An Actual Conflict of Interest occurs when a person's decision or action would compromise a duty to a party without taking immediate appropriate action to eliminate the conflict.
- **Potential Conflict of Interest:** A Potential Conflict of Interest may exist if a person has a relationship, affiliation or other interest that could create an inappropriate influence if the person is called on to make a decision or recommendation that would affect one or more of those relationships, affiliations or interests.
- **Appearance of a Conflict of Interest:** The Appearance of a Conflict of Interest means any situation that would cause a reasonable person, with knowledge of the relevant facts, to question whether another person's personal interest, affiliation or relationship inappropriately influenced that person's action, even though there may be no Actual Conflict of Interest.

A conflict of interest includes any situation in which one's judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a Partner, Family Member, Relative, Friend, Business or other Outside Interest with which they are involved. Such terms are defined below.

- **Business:** Any company, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit-making activities.
- **Family Member:** A person's current and former spouse; children, parents, and siblings; current and former children-in-law, parents-in-law, and siblings-in-law; current and former stepchildren and stepparents; grandchildren and grandparents; and members of the person's household.
- **Friend:** A person with whom the individual has an ongoing personal social relationship. "Friend" does not generally include a person with whom the relationship is primarily professional or primarily based on the person being a current or former colleague. "Friend" does not include mere acquaintances (that is, interactions are coincidental or relatively superficial). Social media friendships, connections, or links, by themselves, do not constitute friendship.
- **Outside Interest:** An Outside Interest may occur when an individual, their Family Member or their Partner has a connection to an organization via employment (current or prospective), has a financial interest or is an active participant.
- **Partner:** A person's romantic and domestic partners and outside Business partners.
- **Relative:** Uncle or aunt; first or second cousin; godparent; godchild; other person related by blood, marriage or legal action with whom the individual has a close personal relationship.

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award Determinations could include

- Revising the contracting party's responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan

- Terminating the contracting party's participation

Any person or entity (including its employees and affiliates) that enters into a contract with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all conflicts of interest through one of the communication channels described in section 1.07.

#### **1.04.1 Federal Conflict of Interest Requirements**

State and federal conflict of interest requirements differ, and Minnesota Housing business partners must comply with all requirements.

Minnesota Housing administers various programs using federal funds. Minnesota Housing requires that each of its external business partners (for example, administrators, borrowers, contractors, grantees or subrecipients) complies with all applicable federal conflict of interest standards. Specifically, no external business partner's employee, agent or consultant may participate in the selection, award or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the business partner's employee, agent, consultant or any member of their immediate family, their partners, or an organization which employs or is about to employ any of these parties, has a financial or other interest in, or obtains a tangible personal benefit from, a firm considered for a contract. External business partner's employees, agents and consultants may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts supported by a federal award. Minnesota Housing will not consider it a violation of this policy if the external business partner's employee, agent or consultant receives an unsolicited item of nominal value.

In addition, no external business's partner employees, agents or consultants "who exercise or have exercised any functions or responsibilities with respect to activities assisted with" funds from HOME Investment Partnerships (HOME), HOME American Rescue Plan (HOME ARP), Housing Opportunities for Persons with AIDS (HOPWA) or National Housing Trust Fund (NHTF) "or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from" a HOME, HOME ARP, HOPWA or NHTF-assisted activity "or have a financial interest in any contract, subcontract, or agreement with respect to the" HOME, HOME ARP, HOPWA or NHTF-assisted activity "or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a

stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.”<sup>2</sup> Violation of federal conflict of interest requirements by business partners, agents or consultants will result in appropriate actions by Minnesota Housing, including the potential termination of the relationship and additional contractual or other remedies. Violation of federal conflict of interest requirements may need to be reported to the federal government in appropriate circumstances.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing relating to federal funds must avoid and immediately disclose to Minnesota Housing any and all conflicts of interest through one of the communication channels described in section 1.07.

A contracting party should review its contract and request for proposals (RFP) material, if applicable, for further requirements.

### **1.05 Assistance to Employees and Affiliated Parties**

Any party entering into a contract with Minnesota Housing for the purpose of receiving an award or benefit in the form of a loan, grant, combination of loan and grant or other funding is restricted in issuing a loan, grant, combination of loan and grant or other funding to a recipient (“Affiliated Assistance”) who is also: (1) a director, officer, agent, consultant, employee or Family Member of an employee of the contracting party; (2) an elected or appointed official of the State of Minnesota; or (3) an employee of Minnesota Housing, unless each of the following provisions are met:

- The recipient meets all eligibility criteria for the program;
- The assistance does not result in a violation of the contracting party’s internal conflict of interest policy, if applicable;
- The assistance does not result in a conflict of interest as outlined in section 1.04;
- The assistance is awarded utilizing the same costs, terms and conditions as compared to a similarly situated unaffiliated recipient and the recipient receives no special consideration or access as compared to a similarly situated unaffiliated recipient; and
- The assistance is processed, underwritten and/or approved by staff/managers who are independent of the recipient and independent of any Family Member of the recipient. Family Member is defined in section 1.04.

A contracting party need not disclose Affiliated Assistance to Minnesota Housing. However, the contracting party must document and certify, prior to the award, that the Affiliated Assistance meets

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<sup>2</sup> See generally, HOME: [24 CFR 92.356](#); including any revisions by the Appendix to the HOME-ARP Notice as amended; HOPWA: [24 CFR 574.625](#); NHTF: [24 CFR 93.353](#). In limited circumstances, a conflict of interest could be waived via an exception request, in writing. For further information, see federal regulations at: HOME: [24 CFR 92.356](#); HOPWA: [24 CFR 574.625](#); NHTF: [24 CFR 93.353](#).



each of the provisions outlined above. This documentation must be included in the Affiliated Assistance file and must be made available to Minnesota Housing upon request. Affiliated Assistance that does not meet each of the provisions outlined above will be considered a violation of Minnesota Housing conflict of interest standards and must be reported by the contracting party through one of the communication channels outlined in section 1.07.

## **1.06 Suspension**

By entering into any contract with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the contract) has not been suspended from doing business with Minnesota Housing. Please refer to Minnesota Housing's website for a list of [suspended individuals and organizations](#) (Go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing, then select Suspensions from the menu).

## **1.07 Disclosure and Reporting**

Minnesota Housing promotes a “speak-up, see something, say something” culture whereby internal staff must immediately report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation through one of the communication channels listed below. External business partners (for example, administrators, grantees or borrowers) and the general public are strongly encouraged to report instances of fraud, misuse of funds, conflicts of interest or other concerns without fear of retaliation using these same communication channels.

- Minnesota Housing's Chief Risk Officer at 651.296.7608 or 800.657.3769 or by email at [MHFA.ReportWrongdoing@state.mn.us](mailto:MHFA.ReportWrongdoing@state.mn.us);
- Any member Minnesota Housing's [Servant Leadership Team](#), as denoted on Minnesota Housing's current organizational chart (Go to mnhousing.gov, scroll to the bottom of the screen and select About Us, select Servant Leadership Team); or
- [Report Wrongdoing or Concerns \(mnhousing.gov\)](#) (Go to mnhousing.gov, scroll to the bottom of the screen and select Report Wrongdoing).

## **1.08 Electronic Signatures**

Minnesota Housing will use and accept e-signatures on eligible program documents subject to all requirements set forth by state and federal law and consistent with Minnesota Housing policies and procedures. The use of e-signatures for eligible program documents is voluntary. Questions regarding which documents Minnesota Housing permits to be e-signed should be directed to Minnesota Housing staff.

## 1.09 Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of Title VI of the Civil Rights Act of 1968; the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988; and the Minnesota Human Rights Act. Housing providers and other entities involved in real estate related transactions are expected to comply with the applicable statutes, regulations and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements. Housing providers and other entities involved in real-estate related transactions must comply with all non-discrimination requirements related to the provision of credit, as well as access to services.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful, because of protected class status, to:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in the making or purchasing of loans for purchasing, constructing or improving a dwelling, or in the terms and conditions of real-estate related transactions;
- Discriminate in the brokering or appraisal of residential property;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Discriminate in the extension of personal or commercial credit or in the requirements for obtaining credit;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Refuse to grant a reasonable accommodation or a reasonable modification to a person with a disability;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish

design and construction mandates for covered multifamily dwellings and requires those in the business of buying and selling dwellings to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Under certain circumstances, applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.

### **1.10 Minnesota Government Data Practices**

Minnesota Housing, and any party entering into a contract with Minnesota Housing, must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota Housing under the contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the contracting party under the contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this section by either the contracting party or Minnesota Housing. If the contracting party receives a request to release the data referred to in this section, the contracting party must notify Minnesota Housing. Minnesota Housing will give the contracting party instructions concerning the release of the data to the requesting party before the data is released. The contracting party's response to the request shall comply with applicable law.

### **1.11 Prevailing Wage**

Under certain circumstances, awards of Minnesota Housing funds may trigger state prevailing wage requirements under [Minnesota Statutes Chapter 177](#) or [Minnesota Statutes Section 116J.871](#). In broad terms, Minnesota Statutes Chapter 177 applies to an award of \$25,000 or greater for housing that is publicly owned. Minnesota Statutes Section 116J.871 applies to awards for non-publicly owned housing that meet the following conditions: (1) new housing construction (not rehabilitation of existing housing); (2) a single entity receives from Minnesota Housing \$200,000 or more of grant proceeds or \$500,000 of loan proceeds; or (3) allocations or awards of low-income housing tax credits, for which tax credits are used for multifamily housing projects consisting of more than ten units.

Minnesota Statutes Section 116J.871 sets out several exceptions to the applicability of prevailing wage including (1) rehabilitation of existing housing; (2) new housing construction in which total financial assistance at a single project site is less than \$100,000; and (3) financial assistance for the new construction of fully detached single-family affordable homeownership units for which the financial assistance covers no more than ten fully detached single-family affordable homeownership units.

Entities receiving funding from Minnesota Housing as described in this section shall notify all employers on the project of the recordkeeping and reporting requirements in Minnesota Statutes Section 177.30, paragraph (a), clauses (6) and (7). Each employer shall submit the required information to Minnesota Housing.

Questions related to submission of required information to Minnesota Housing may be directed to: [mhfa.prevailingwage@state.mn.us](mailto:mhfa.prevailingwage@state.mn.us).

All questions regarding state prevailing wages and compliance requirements should be directed to the Minnesota Department of Labor and Industry as follows:

Division of Labor Standards and Apprenticeship  
State Program Administrator  
443 Lafayette Road N, St. Paul, MN 55155  
651.284.5091 or [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

If a contractor or subcontractor fails to adhere to prevailing wage laws, then that contractor or subcontractor could face civil and/or criminal liability.