



# **MEMORANDUM OF UNDERSTANDING**

## **IMPROVEMENT OF RESIDENTIAL FACILITY WITHIN THE CITY OF JONESBORO BETWEEN CITY GOVERNMENT AND PRIVATE NON- PROFIT ORGANIZATION TO PROVIDE SUSTAINABLE LIVING ENVIRONMENT**

This Memorandum of Understanding (“MOU”) is entered into jointly by the City of Jonesboro (City) and Foundation Care, Inc. (FC).

### **I. Purpose**

The purpose of this MOU is to formalize the commitment among the listed entities to work in a partnering process to coordinate and leverage funds to complete the shared projects that apply jointly to the entities in order to provide sustainable living environment in conjunction with the Community Development Block Grant (CDBG) funds. This partnership will facilitate a coordinated effort that ensures the residential facility is remediated and brought to standard according to the federal, state and local laws. This MOU shall be applicable to projects outlined in the 2016 CDBG Action Plan.

### **II. Background**

The goal of the 2016 CDBG Action Plan (“Project”) is to meet the CDBG program’s National Objectives by (1) benefit to low- and- moderate income persons; (2) aid in the prevention or elimination of slums or blight; and (3) ensure community development needs having a particular urgency, as defined in 24 CFR§570.208. Among other things, the project will include resurfacing of driveway and parking area of a residential facility for the 2016 CDBG program year. Funding for the Project under this MOU will be derived from several funding sources, which includes federal, state and local contributions. As a result, the City and FC are required to comply with all federal, state and local regulations with use of federal funding.

The need for coordination to streamline the project for the reconstruction is seen as necessary by the parties to fulfill as mandated through National Objectives set forth by U.S. Department of Housing and Urban Development for the CDBG program.

### **III. Statutory and Regulatory Authority**

WHEREAS, federal funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, Title VIII of the Civil Rights Act of 1968, as amended in 1988, or the Fair Housing Act (FHA) prohibits discrimination in the sale, rental, and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status

(including children under age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18) and disability.

WHEREAS, Title VI of the Civil Rights Act of 1964 prohibits the discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance.

WHEREAS, Title II of the Americans with Disabilities Act of 1990 prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.

WHEREAS, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activities receiving federal financial assistance.

WHEREAS, Executive Order 11063 prohibits discrimination in the sale, leasing, rental, or disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

WHEREAS, Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

WHEREAS, in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of services through federally funded activities.

**NOW, THEREFORE:**

#### **IV. Commitment of the Entities**

To facilitate preparation of the facility improvement, the City and FC hereby commit as follows:

- FC must notify and submit appropriate documentation indicating the qualification of residents, as applicable.
- FC must comply with City's policy and procedures in accordance with 24 CFR §570 and 2 CFR §200, as applicable.
- The City will enter in an agreement with the contractor(s) for certain activities of the Project and will be making direct payments to said contractor(s).
- FC shall maintain all records required by the Federal regulations specified in 24 CFR §570.506 that are pertinent to the aforementioned activities.

- FC shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold that receive federal financial assistance. Those properties shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions in 24 CFR §570.503(b) (8), as applicable.
- All records pertaining to the Project shall be made available to the City, the Federal agency and their designees, at any time during normal business hours, as deemed necessary, to audit, and make excerpts or transcripts of all relevant data.
- FC shall hold harmless, defend and indemnify the City, its agents, and employees from any suits and actions: including attorney’s fees, all costs of litigation, and judgment brought against the City as a result of loss, damage or injury to persons or property arising out of or resulting from FC direct use and operation of programs in connection with the FC’s performance or nonperformance of the services or subject matter called for in this MOU only if as a result of the FC’s negligent or intentional acts.
- FC shall comply with the bonding and insurance requirements as outlined in 24 CFR §§84.31 and 84.48 and 2 CFR §§200.304, 200.310 and 200.447.
- The City may amend, in its discretion, this MOU to conform to all Federal, state or local governmental laws and regulations as deemed necessary. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of the MOU, such modifications will be incorporated only by written amendment signed by both parties.
- In accordance with 2 CFR §200.213, non-federal entities are subject to the non-procurement debarment and suspension regulations that restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in CDBG programs or activities. FC and its agents under this MOU shall be registered with System for Award Management (SAM) prior to the commencement of activities.
- FC agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR §570.606(b); (b) the requirements of 24 CFR §570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR §570.606(b) (2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for CDBG-assisted projects. FC also agrees to comply with applicable City ordinances, variances and policies concerning the displacement of persons from their residences.
- FC agrees to comply with the non-discrimination practices regarding employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR §570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are applicable.

- Both parties shall maintain documentation that demonstrates compliance with hour and wage requirements according to all federal, state and local laws and regulations. Such documentation shall be readily available upon request.
  - FC shall not enter into any subcontracts with any agency or individual in the performance of this MOU without the written consent of the City prior to the execution of such agreement. FC will monitor all subcontracted services on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of actions taken in correction areas of noncompliance. FC shall initiate all of the provisions of this MOU in its entirety to be included in any subcontract executed in the performance of said Project. FC shall undertake to ensure that all subcontracts consent to the performance of this MOU shall be awarded upon a fair and open competitive basis. Executed copies of all subcontracts shall be directed to the City along with documentation concerning the selection process as applicable.
  - FC agrees to abide by the provisions of 24 CFR §570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance. No persons having such a financial interest shall be employed or retained by either party hereunder. These conflict of interest provisions include any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies or FC that are receiving funds under the CDBG Entitlement program.
1. Both Parties agrees to comply with the following requirements insofar as they apply to the performance of this MOU:

Air and Water

- Clean Air Act, 42 U.S. C., 7401 *et seq.*
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued hereunder; and
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Entity shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

#### Lead-Based Paint

Any construction or rehabilitation of residential structures with assistance provided under this MOU shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §570.608, and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures must be undertaken.

#### Historic Preservation

Compliance with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 38 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this MOU. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

#### **IV. Conclusion**

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the Project fully comply with all applicable federal requirements and minimizes duplication of effort.

**City of Jonesboro**

**Foundation Care, Inc.**