

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), hereafter referred to as the Memorandum, entered into on March 22, 2018, by and between Iowa Finance Authority residing at 2015 Grand Ave., Des Moines, Iowa 50312, herein after referred to as the "IFA" and Iowa Department of Natural Resources residing at Wallace State Office Building, 502 East 9<sup>th</sup> St, 4<sup>th</sup> Floor, Des Moines, Iowa 50319, hereinafter referred to as the "IDNR" and collectively known as the "Parties" for the purpose of establishing and achieving various goals and objective relating to the partnership.

### 1. PREAMBLE

**WHEREAS:** The IFA has received, and will continue to receive HOME Investment Partnerships Program (HOME) allocation from the US Department of Housing and Urban Development (hereinafter HUD) for the funding housing projects throughout the State of Iowa; **and**

**WHEREAS:** the IFA will award HOME funds to project throughout the State of Iowa; **and**

**WHEREAS:** the IFA in consultation with IDNR have determined that certain types of undertakings normally result in a Phase I and/or Phase II Environmental Site Assessment; **and**

**WHEREAS:** in order ensure that the Phase I and/or Phase II Environmental Site Assessments have not overlooked information that could be harmful to the site occupants; **and**

**WHEREAS:** the aforementioned Parties desire to enter into the herein described agreement in which they shall work together to accomplish the goals and objectives set forth; **and**

**WHEREAS,** the Parties are desirous to enter an understanding thus setting out all necessary working arrangements that both Parties agree shall be necessary to complete this partnership.

### 2. MISSION

The aforementioned partnership has been established with the following intended mission in mind: Provide safe, sanitary and decent housing to low-income lowans, by ensuring the environmental assessment on the proposed project site is a comprehensive study by meeting all of NEPA laws and regulations.

### **3. PURPOSE and SCOPE**

The Parties intend for this MOU to provide the cornerstone and structure for any and all possibly impending binding contract which may be related to the partnership.

### **4. OBJECTIVES**

The Parties shall endeavor to work together to develop and establish policies and procedures that will promote and sustain a healthy living environment by reviewing Phase I and Phase II Environmental Assessments for HOME rental projects to meet local, state and federal regulations and standards.

### **5. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES**

It is the desire and the wish of the aforementioned Parties to this MOU Agreement that this document should not and thus shall not establish nor create any for or manner of formal agreement or indenture, but rather an agreement between the Parties to work together in such a manner that would promote a genuine atmosphere of collaboration and alliance in the support of and effective and efficient partnership and leadership meant to maintain, safeguard and sustain sound and optimal managerial, financial and administrative commitment with regards to all matters related to the partnership through means of the following individual services.

### **6. SERVICES COOPERATION**

IFA shall render and provide the following services that include, but are not limited to: providing to IDNR the Phase I and/or Phase II done to the standards of ASTM E 1527-13 and ASTM E 1903, respectively.

IDNR shall render and provide the following services that include, but are not limited to: Review and provide to IFA their professional opinion on the results of the Phase I and/or Phase II environmental studies for HOME rental projects.

### **7. TIMELINE**

The above outlined scope and objective shall be contingent on the Parties obtaining the necessary funds required for the partnership as described within any grant or loan application, if any. Responsibilities under this MOU may coincide with the environmental review period.

### **8. TERMS OF UNDERSTANDING**

The term of the MOU shall be for a period of five years from the aforementioned effective date and maybe extended upon written mutual agreement of both Parties.

## **AMENDMENT OR CANCELLATION OF THIS MEMORANDUM**

This MOU may be amended or modified at any time in writing by mutual consent of both Parties.

In addition, the MOU may be cancelled by either party with 30 days advance written notice, with the exception where cause for cancellation may include, but is not limited to, a material and significant breach of any of the provisions contained herein when it may be cancelled upon delivery of written notice to the other party.

## **GENERAL PROVISIONS**

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this MOU in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The Parties assume full responsibility for their performance under the terms of this Memorandum.

If at any time either party is unable to perform their duties or responsibilities under this MOU consistent with such party's statutory mandates, the affected party shall immediately provide written notice to the other party to and regulatory establish a date for resolution of the matter.

## **LIMITATION OF LIABILITY**

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this MOU.

## **9. ARBITRATION/MEDIATION DISPUTE RESOLUTION**

The Parties to the MOU agree that should any dispute arise through any aspect of this relationship, including, but not limited to, any matters, disputes or claims, the parties shall confer in good faith to promptly resolve any dispute. In the event that the parties are unable to resolve the issue or dispute between them, then the matter shall be mediated and/or arbitrated in an attempt to resolve any and all issues between the parties.

The Parties agree that any claim or dispute that arises through this agreement, the relationship or obligations contemplated or outlined within this agreement, if not resolved through mediation, shall then go to and be resolved through final and binding arbitration. Any decision reached by the Arbitrator shall be final and binding and, if required, may be entered as a judgement in any court having jurisdiction.

In the event that any court having jurisdiction should determine that any portion of the Agreement to be invalid or unenforceable, only that portion shall be deemed invalid and not effective, while the balance of this Agreement shall remain in full effect and enforceable.

## **NOTICE**

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

## **GOVERNING LAW**

This MOU shall be governed by and construed in accordance with the laws of the State of Iowa.

## **10. SEVERABILITY CLAUSE**

In the event that any provision of this MOU shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this Memorandum shall be determined to be unlawful or otherwise unenforceable, the remainder of the Memorandum shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this Memorandum to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

## **11. ASSIGNMENT**

Neither part to the MOU may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

## **12. ENTIRE UNDERSTANDING**

The herein contained MOU constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this MOU desire or intend that any implementing contract, license, or other agreement entered into between the Parties subsequent hereto shall supersede and preempt any conflicting provision of this MOU whether written or oral.

## **MOU SUMMARIZATION**

FURTHERMORE, the Parties to this MOU have mutually acknowledged and agreed to the following:

The Parties to this MOU shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of this partnership.

It is not the intent of this MOU to restrict the Parties to this Agreement from their involvement or participation with any other public or private individuals, agencies or organizations.

The Parties to this MOU shall mutually contribute and take part in any and all phases of the planning and development of this partnership, to the fullest extent possible.

It is not the intent or purpose of this MOU to create any rights, benefits and/or trust responsibilities by or between the parties.

The MOU shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the partnership.

Should there be any need or cause for the reimbursement or the contribution of any funds to or in support of the partnership, it shall then be controlled in accordance with Iowa governing laws, regulations and/or procedures.

In the event that contribution funds should become necessary, any such endeavor shall be outlined in a separate and mutually agreed upon written agreement by the parties or representatives of the Parties in accordance with current governing laws and regulations, and in no way does this MOU provide such right or authority.

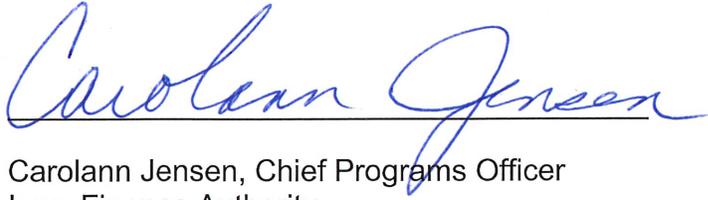
The Parties to this MOU have the right to individually or jointly terminate their participation in this Agreement provided that advanced written notice is delivered to the other party.

Upon the signing of this MOU by both Parties, this Agreement shall be in full force and effect.

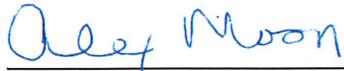
### **13. AUTHORIZATION and EXECUTION**

The signing of this MOU does not constitute a formal undertaking, and as such it simply intends that the signatories shall strive to reach, to the best of their abilities, the goals and objective stated in this MOU.

This Agreement shall be signed by the Iowa Finance Authority and Iowa Department of Natural Resources and shall be effective as of the date first written above.



Carolann Jensen, Chief Programs Officer  
Iowa Finance Authority



Alex Moon, Land Quality Bureau Chief  
Iowa Department of Natural Resources

## EXHIBIT A

Phase I Environmental Site Assessment (ESAs), these assessments identify Recognized Environmental Conditions (RECs) that could impact the value of the property. Phase I includes historical sources, radius map search of the local, state, tribal and federal databases; regulatory interviews of state and local government officials; owner/occupant interviews-past and present-shall be attempted; site reconnaissance performed under the charge of an Environmental Professional-including property structures, periphery of the property, current and past uses of the property, obvious geologic, hydro-geologic and topographic conditions, roads, and potential hazardous substances; and non-scope considerations including radon and visual inspections of lead-based paint, asbestos and mold potential. (ASTM) E 1527-13

Phase II (ESAs), in the event that a REC is revealed from a Phase I EA, a Phase II ESA can be ordered. If Phase I requires additional investigation a more extensive report including sampling and laboratory analysis will be done. Phase II ESA is generally a subsurface investigation that can include-soil sampling; groundwater monitoring, sampling and analysis; soil vapor/Sub slab soil gas testing; ground penetrating radar; and characterization of hazardous chemicals. Conditions that may necessitate the request for a Phase II-current or former underground storage tanks (USTs); existing USTs are past their life expectancy; evidence of a release (leaking drum, compactor) or threatened release; historical use examples-dry cleaners, metal plating facility, gas station, auto repair, lumber yard and others. (ASTM) E 1903

Property Condition Assessments (PCAs), this assessment is designed to evaluate the physical condition of a property by conducting a limited walk-through survey. ASTM E2018 Standards for Property Condition Assessments.