



Date: March 28, 2011

**APPROVAL OF THE CITY OF DES MOINES
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT (HUD) SECTION 3 PLAN**

WHEREAS, Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. sec. 1701u) requires Entitlement cities to ensure that employment and other economic and business opportunities generated by HUD financial assistance, **to the greatest extent feasible**, are directed to low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low-income persons; and

WHEREAS, the City of Des Moines has prepared a Section 3 Plan, on file with the City Clerk as Exhibit A and by this reference made a part hereof, which outlines the policies and procedures the City will use to operate the local Section 3 program to provide employment and business opportunities to low-income persons, particularly recipients of government housing assistance and other HUD programs; and

WHEREAS, this plan covers the City's HUD Consolidated Plan Programs, including the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Shelter Grant (ESG), and Supportive Housing Program (SHP) and is limited to construction, housing rehabilitation, public improvement construction and economic development projects administered by the city; and

WHEREAS, the City's Section 3 Plan follows the employment and training goals that contractors and subcontractors should meet in order to comply with Section 3 requirements set forth in 24 CFR 135.30.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the City's Section 3 Plan is hereby approved.



Roll Call Number

Agenda Item Number

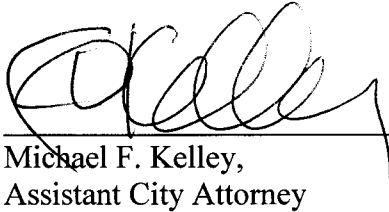
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Date: March 28, 2011

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to implement the Plan so as to provide employment and other economic and business opportunities to low-income persons affected by financial assistance programs through the U.S. Department of Housing and Urban Development.

APPROVED AS TO FORM:



Michael F. Kelley,
Assistant City Attorney

MOVED BY _____ TO ADOPT

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

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EXHIBIT A

Date March 28, 2011

Agenda Item 29

Roll Call # _____

HOUSING AND URBAN DEVELOPMENT ACT OF 1968

SECTION 3 PLAN

FOR

THE CITY OF DES MOINES, IOWA
COMMUNITY DEVELOPMENT DEPARTMENT

Approved by the Des Moines City Council on March 28, 2011 (R-10-0000)

OFFICE OF ECONOMIC OPPORTUNITY
FAIR HOUSING EQUAL OPPORTUNITY
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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General Policy Statement

It is the policy of the City of Des Moines to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to age, race, color, religion, creed, sex, national origin, ancestry, disability, or sexual orientation. The City implements this policy through the awarding of contracts to contractors, vendors, and suppliers, to create employment and business opportunities for residents of the City and other qualified low and very low-income persons residing in low-moderate income areas.

The policy shall, to the greatest extent feasible, result in the recruitment, employment, and utilization of low or very low-income residents and eligible businesses by contractors working on contracts partially or wholly funded with the United States Department of Housing and Urban Development (HUD) funds. The City embraces the employment and training goals that contractors and subcontractors should meet in order to comply with Section 3 requirements, established in 24 CFR 135.30.

Section 3 Purpose

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701 u) requires the City of Des Moines to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, are directed to low or very low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low or very low-income persons.

Section 3 Contracting Policy and Procedure

The City of Des Moines will incorporate Section 3 procedures into HUD-funded construction/rehabilitation procurements (including contractors who supply professional services, but not including contractors who only furnish materials or equipment and do not undertake the work of installing the materials or operating the equipment) for which the estimated amount of the contract or subcontract exceeds \$100,000, and will follow goal requirements set forth in 24 CFR Part 135 for awarding contracts to Section 3 Business Concerns.

Section 3 Business Concern — a business concern:

- 1) That is 51% or more owned by Section 3 resident(s); or
- 2) Whose permanent, full-time employees include persons, at least 30% percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that fall within 1 or 2 above.

Section 3 Plan

The City of Des Moines has developed this Section 3 Plan to identify the applicability of provisions of 24 CFR Part 135, and actions that will be implemented to ensure compliance with the requirements of Section 3. The Section 3 Plan only applies to the City's HUD Consolidated Plan Programs, so it includes CDBG, HOME, and ESG housing construction, housing rehabilitation, public improvement construction, and economic development projects.

Section 3 Employment & Training Goals

The City of Des Moines has adopted the following goal for Section 3 resident hiring on HUD-funded construction contracts (Reference 24 CFR 135.30 — Numerical goal for meeting the greatest extent feasible requirement). A Section 3 resident is defined as a person considered low or very low-income based on area median income levels.

The City of Des Moines anticipates that an appropriate number of residents with particular qualifications, or a willingness to begin unskilled labor, will be able to participate in the City of Des Moines contracted labor efforts. A prime contractor may satisfy City of Des Moines resident hiring requirements through its subcontractors.

Goals for Contractors or Subcontractors

In the absence of evidence to the contrary, any contractor which meets the goals set forth in this section will be considered to be in compliance with Section 3 requirements.

The City of Des Moines has established the following Section 3 goals:

- 1) To the greatest extent feasible, contractors and subcontractors shall hire Section 3 residents for 30% of the aggregate number of new hires for each calendar year; and
- 2) To the greatest extent feasible, contractors shall commit to award to Section 3 business concerns at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction; and at least 3% of the total dollar amount of all other Section 3 covered contracts.

Failure to meet the goals does not automatically trigger sanctions against the contractor. It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to employ qualified Section 3 program participants before any other person, when hiring additional employees needed to complete proposed work to be performed with HUD (federal) funds.

It is the responsibility of contractors, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. Any contractor that does not meet the Section 3 numerical goals must demonstrate why meeting the goals was not feasible.

The Section 3 Clause must be included in all Section 3 covered projects. The Section 3 Contract Clause specifies the requirements for contractors hired for Section 3 covered projects, and is attached to this plan as Exhibit "B".

Section 3 Program Participant Certification Procedure

The City will develop a comprehensive procedure for certifying Section 3 program participants who reside in the metropolitan area and are seeking preference in training and employment. This effort will include developing partnerships with local employment training agencies and educational institutions.

The Des Moines Housing Services Department will certify Section 3 eligible participants seeking employment who reside in the metropolitan area and are receiving housing assistance through the Des Moines Housing Services Department. Copies of the Section 3 Resident Certification form can be obtained from the Des Moines Housing Services Department.

Resident Hiring Requirements

The City of Des Moines has adopted a **30%** goal for Section 3 resident hiring that is to be used on construction contracts (Reference 24 CFR 135.30 — Numerical goal for meeting the greatest extent feasible requirement). It is expected that an appropriate number of residents with particular qualifications or a willingness to begin unskilled labor will be able to participate in the City of Des Moines contracted labor efforts. A prime contractor may satisfy City of Des Moines resident hiring requirements through its subcontractors.

It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to employ qualified Section 3 program participants before any other person, when hiring additional employees needed to complete proposed work to be performed with HUD (federal) funds.

Assisting Contractors to Achieve Section 3 Hiring and Contracting Goals

The City of Des Moines will assist bidders and contractors in achieving Section 3 hiring and contracting goals by:

The bidder/contractor should present a list to the Community Development Department's Community Investment Administration (CIA) Division, of the number of subcontracting and/or employment opportunities expected to be generated from the initial contract, when known.

_____ Upon request, the CIA will provide the bidder/contractor with a list of interested and qualified Section 3 residents for construction projects or will direct the contractor to the personnel responsible for maintaining said list.

_____ The CIA will provide the bidder/contractor with a list of Section 3 business concerns interested and qualified for construction projects.

_____ The City will review the new hire clause with applicable contractors to ensure that the requirement is understood.

_____ The City will make space available to post any known job openings created by all Section 3 qualified projects at the Des Moines Community Action Agency Site Offices as well as the Des Moines Housing Services Department.

Evidence of Section 3 Certification

Any businesses seeking Section 3 eligibility with the City of Des Moines must complete a copy of the 'Section 3 Business Certification Form'. Such certification forms, issued by the City of Des Moines Community Development Department, shall be adequately supported with appropriate documentation as referenced in the form.

The contractor and any subcontractor with a contract greater than \$100,000 on a Section 3 covered project shall sign the attached Section 3 Assurance of Compliance (Exhibit "A") prior to starting work.

Efforts to Award Contract Opportunities to Section 3 Business Concerns

The City of Des Moines and the contractors and subcontractors may use any or all of the following methods to notify and contract with Section 3 business concerns when contracting opportunities exist.

- Advertise contracting opportunities via newspaper, mailings, posting notices that provide general information about the work to be contracted and where to obtain additional information.
- Provide written notice of contracting opportunities to all known Section 3 business concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
- Coordinate pre-bid meetings at which the Section 3 business concerns would be informed of upcoming contracting opportunities in advance.
- Contact contractor associations and community organizations to inform them of contracting opportunities and to request their assistance in identifying Section 3 businesses.

Section 3 Reporting

Annual Reporting

The City of Des Moines will report to HUD annual accomplishments regarding employment and other economic opportunities provided to low and very low income persons under Section 3. Form HUD-60002 is currently being utilized for reporting accomplishments. This form may be changed and updated from time to time as required by HUD and 24 CFR 135.

Contractor Reporting

General contractors and sub-contractors for Section 3 eligible projects are required to submit to the City a New Hires Section 3 Compliance Form (Exhibit C) prior to final payment on the contract.

Internal Section 3 Complaint Procedure

In an effort to resolve complaints generated due to non-compliance through an internal process, the City of Des Moines encourages submittal of such complaints to its CIA as follows:

- Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR 135.
- Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.
- An investigation will be conducted if complaint is found to be valid. The City will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.

If complainants wish to have their concerns considered outside of the City of Des Moines a complaint may be filed with:

Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

Definitions

Applicant — Any entity which makes an application for Section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association.

Assistant — the Assistant Secretary for Fair Housing and Equal Opportunity.

Business Concern — a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Contractor - any entity which contracts to perform work generated the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Employment Opportunities Generated by Section 3 Covered Assistance — all employment opportunities generated by the expenditure of Section 3 covered assistance (housing construction, housing rehabilitation, and public improvements funded by CDBG, HOME, HOPWA, and ESG as spelled out in 24 CFR Part 135).

Low-income person — families (including single persons) whose incomes do not exceed 80 per cent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per cent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

Metropolitan Statistical Area — a metropolitan statistical area (MSA), as established by the Office of Management and Budget (Des Moines MSA = Polk, Dallas, Warren, Madison, Guthrie counties).

New Hires — full-time employees for permanent, temporary or seasonal employment opportunities

Recipient — any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate

beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Section 3—Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u)

Section 3 Business Concern — a business concern,

- 1) That is 51% or more owned by Section 3 resident(s); or
- 2) Whose permanent, full-time employees include persons, at least 30% percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
- 3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that fall within 1 or 2 above.

Section 3 Covered Assistance

Assistance provided under any HUD community development program that is expended for work arising in connection with employment, housing rehabilitation, construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Covered Contracts — a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project.

Section 3 covered contracts do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation (FAR). Section 3 covered contracts also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

Section 3 Covered Project - the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 Resident — an individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended and who is considered to be a low-to very low-income person.

Subcontractor — any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation

for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Very low-income person — families (including single persons) whose income do not exceed 50 per cent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per cent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

EXHIBIT A

SECTION 3 CLAUSES

ASSURANCE OF COMPLIANCE (SECTION 3, HUD ACT OF 1968) TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS

The City of Des Moines will ensure that the following clauses are included in all Section 3 covered contracts. The contractor and subcontractors (where applicable) will be bound by its provisions.

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled
 - (1) after the contractor is selected but before the contract is executed, and

(2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible

(i) preference and opportunities for training and employment shall be given to Indians, and

(ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Date: _____

Applicant _____

Address _____

Authorized Signature _____

EXHIBIT B

**CITY OF DES MOINES
NEW HIRES SECTION 3 COMPLIANCE FORM**

To be submitted prior to final payment on the contract.

This form is distributed to the General Contractor (GC) with the contract. GC is also required to provide this form to any subcontractor firms they hire for this project. **This form must be completed by the GC and all its subcontractors, regardless if the contractor/subcontractor has hired any employees and be submitted to the City before final payment will be made.**

Review the information below, check all that apply to:

Company Name _____

Project Name _____

Project Address _____

1. Employment Opportunities

___ I have not hired any new employees during the project.

___ I have hired ___ Section 3 employees and/or ___ non-Section 3 employees during the project.

2. I have taken one or more of the following recruitment steps to hire a Section 3 resident with the highest training and employment priority ranking: (check all that apply)

___ Advertised to fill vacancy(ies) at the site(s), where work is taking place, in connection with this project. List sites: _____.

___ Placed signs or posters in prominent places at each of the above listed sites and taken photos to document of such notices.

___ Contacted DMAACC for any HUD Youthbuild programs currently operating in Des Moines-Polk County; then contacted these programs for Youthbuild referrals

___ Kept a log of all applicants and indicated the reasons why Section 3 residents who applied were not hired

___ Retained copies of any employment applications completed by public housing Section 8 certificate or voucher holders or other Section 3 residents

___ Sent a notice about Section 3 training and employment requirements and opportunities to labor organizations or to worker representatives with whom our firm has a collective bargaining or other agreement

Send proof of all checked items to City of Des Moines Section 3 representative above via fax at (515) 237-1687 or deliver to:

City of Des Moines
Department of Community Development
Attn: Section 3
602 Robert D Ray Dr.
Des Moines, Iowa 50309

Authorized Name _____

Firm Name _____

Title: _____

Date: _____