FORM 3-3: CDBG Contract Provisions

The following CDBG Contract Provisions should be used with all construction and professional service contracts, where CDBG funds are being used in whole or in part.

CDBG Contract Provisions

1. **Definitions:** For purposes of this Contract, the following terms shall have the meanings set forth below:

   (a) "Assistance" means the CDBG grant funds provided, or to be provided, to the Grantee by the State, pursuant to the Grant Award Agreement.

   (b) "CDBG" means Community Development Block Grant.

   (c) "Contract" means the contractual agreement between the Owner and the Contractor to which these Contract Special Provisions have been incorporated and made a part thereof.

   (d) "Contractor" means the contractor whose services are retained pursuant to the Contract.

   (e) "Grantee" means the unit of local government designated as the recipient of CDBG Assistance in a party to the Grant Award contract with the South Dakota Governor's Office of Economic Development.

   (f) "HUD" means U.S. Department of Housing and Urban Development, which is the federal agency that awards and has authority over CDBG funding to the State.

   (g) "Owner" means the Grantee or Subrecipient, as applicable.

   (h) "Project" means the project for which the services of the Contractor have been retained pursuant to the Contract which are funded, in whole or in part, with CDBG funds.

   (i) "State" means the State of South Dakota, or that agency, agency division, or Office of State government which has been delegated the responsibility for administering the CDBG program for the State of South Dakota, as appropriate.

   (j) "Subrecipient" means the agent of the unit of local government as designated by an agreement.

   (k) "Labor Surplus Area" means a civil jurisdiction that has an unemployment rate at least 20% above the average unemployment rate for all states, the District of Columbia, and Puerto Rico during the previous two calendar years. The Department of Labor issues the labor surplus area list on a fiscal year basis.

2. **Prime Contractor Responsibilities:** The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this Contract. The Owner will consider the Contractor to be the sole point of contact with regard to contractual matters. All contractors must be registered in the federal System for Award Management (SAM) and be eligible to receive federal contracts.

3. **Federal and State Laws:** The Contractor agrees to comply with all CDBG requirements as well as other federal and state laws, regulations, or Executive Orders. The State reserves the right to add or delete terms and conditions of this Contract as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.

4. **Procurement and Contracting:** In accordance with 2 CFR Part 200, the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. This provision shall supersede any conflicting provision in an executed contract document or agreement funded in whole or in part with CDBG funds.

5. **Ownership**: Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this Project, shall be vested in the Grantee, unless otherwise authorized by the State. When the Grantee determines that the property is no longer required for the purposes of this Project, the Grantee must notify the State and obtain approval for disposition of the property in accordance with applicable guidelines.

6. **Domestic Preferences for Procurements**: In the performance of this Agreement, Contractor shall, as appropriate and to the greatest extent practicable, purchase, acquire, and/or use goods, products, and materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts. For purposes of this section:

   a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

   b. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer- based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7. **Build America, Buy America:** This agreement is for a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18,2022.

8. **Copyright:** Except as otherwise provided in the terms and conditions of this Contract, the Contractor paid through this Contract is free to copyright any books, publications or other copyrightable materials developed in the course of the Project and under this Contract. However, HUD and the State reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal government and State purposes:

   (a) the copyright in any work developed under this Contract; and

   (b) any rights of copyright to which a subcontractor purchases ownership with grant support.

   The Federal government's rights and the State's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

9. **Reporting Requirements:** The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the State or HUD. Further, the Contractor agrees to require any subcontractors to submit reports that may be required and to incorporate such language in its agreements. Failure to meet deadlines with the required information could result in sanctions.

10. **Access to Records:** The Contractor shall grant access to the City, State or any other passthrough entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations,

excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

11. **Maintenance of Records:** Contractor will keep adequate records and supporting documentation, which concern or reflect its services rendered under this agreement. All records and documentation will be retained by selected firm until five years after project completion. However, if any litigation, claim, or audit is started before the expiration of the five-year period, then records must be retained for five years after the litigation, claim or audit is resolved.

12. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Contractor under this Contract, which the Grantee or the State requests to be kept confidential, shall not be made available to any individual or organization by the Contractor without prior written approval of the Grantee or the State, as applicable.

13. **Reporting of Fraudulent Activity:** If at any time during the term of this Contract anyone has reason to believe by whatever means that, under this or any other program administered by the State, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this Contract or any other contract, such information shall be reported immediately to the appropriate authorities.

14. **Conflicts of Interest:** Regulations at 2 CFR 200.112 and 24 CFR 570.489(h) regarding conflicts of interest apply to the use and expenditure of CDBG funds by the Grantee and its subrecipients, including the Contractor.

    No member, officer, or employee of the recipient, subrecipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. This provision shall be incorporated in all such contracts or subcontracts.

15. **Applicable Law:** In addition to the applicable Federal laws and regulations, this Contract is also made under and shall be construed in accordance with the laws of the State. By execution of this Contract, the Contractor agrees to submit to the jurisdiction of the State for all matters arising or to arise hereunder, including but not limited to performance of said Contract and payment of all licenses and taxes of whatever kind or nature applicable hereto.

16. **Termination for Cause:** If either Party materially defaults in the performance of any of its duties or obligations under this Agreement, the Party in default either (1) must substantially cure the default within thirty (30) days after written notice is given to the defaulting Party specifying the default; or (2) with respect to those defaults which cannot reasonably be cured within thirty (30) days, must commence curing said default within thirty (30) days, proceed with all due diligence, and substantially cure the default within ninety (90) days. If the defaulting party is unable to do so, the Party not in default may, by giving written notice of termination to the defaulting Party, terminate this Agreement as of a date specified in the notice of termination (the "Termination Date"), such Termination Date being subsequent to the date of the notice of termination.

17. **Termination for Convenience:** Either party may terminate this Agreement in its entirety for convenience after providing the other party 30 days written notice in advance. Any or all finished or unfinished deliverables prepared by the Contractor under this Agreement shall, at the option of the Grantee, become the property of the Grantee.

18. **Breach of Contract Terms/Sanctions:** Upon written notice, the grantee may withhold payments to the contractor if the contractor shall fail to fulfill in a timely and proper manner its obligations to grantee under this contract, or if the contractor shall violate any of the conditions of this contract. The grantee shall in its written notice to contractor fully describe the nature of failure or violation by contractor, the corrective action required of contractor, and, the grantee shall allow the contractor thirty (30) days from the date of notification to correct such failure and/or violation. If such failure or violation is corrected by the contractor within thirty (30) days from the date of notification, then the grantee shall process payment(s) to the contractor. If such failure or violation is not corrected within thirty (30) days from the date of this notification, then the grantee may proceed to terminate this contract.

19. **Debarment and Suspension:** A contract award (2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

    By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

    No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

    If any part of the work covered by this Contract is to be subcontracted, the Contractor shall identify the subcontracting organization, and the contractual arrangements made therewith to the Owner. All subcontracts must be approved by the Owner to ensure they are not debarred or suspended by the Federal or State governments. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

20. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms:** Federal regulations require Contractors to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, affirmative steps must be taken to assure that MBEs and WBEs are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

    a. Including qualified MBEs and WBEs on solicitation lists;

    b. Assuring that MBEs and WBEs are solicited whenever they are potential sources;

    c. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by MBEs and WBEs;

    d. Where the requirement permits, establishing delivery schedules which will encourage participation by MBEs and WBEs;

e. Using the services and assistance of the Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, the South Dakota Department of Disadvantaged Business Enterprise Program; and

f. Requiring the subcontractor, if any, to take the affirmative actions outlined in (a) – (e) above.

21. **Federal Lobbying Restrictions:** The Contractor certifies, to the best of its knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: https://www.hudexchange.info/resources/documents/HUD-Form-SfIII.pdf in accordance with its instructions; and

c. It will require that the language of this Section be included in the award documents for all subcontracts at all tiers.

d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

22. **Equal Opportunity and Nondiscrimination**:

The Contractor agrees to comply with equal opportunity requirements applicable to Community Development Block Grant activities. Specifically, the Grantee agrees to comply with:

i. Title VI. Civil Rights Act Of 1964: which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

ii. Title VIII, Civil Rights Act Of 1968: which provides for fair housing throughout the United States. Kinds of discrimination prohibited include refusal to sell, rent, or negotiate, or otherwise to make unavailable; discrimination in terms, conditions and privileges; discriminatory advertising; false representation; blockbusting; discrimination in financing; and discrimination in membership in multi-listing services and real estate broker organizations. Discrimination is prohibited on the grounds of race, color, religion, sex and national origin. The GOED (and Grantees) shall administer programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this Title.

iii. Section 109, Housing and Community Development Act Of 1977: which provides that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.

iv. Age Discrimination Act of 1975: which provides that no person shall on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

v. Americans with Disabilities Act of 1990: which provides that no person, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

vi. Section 504 of the Rehabilitation Act of 1973: which provides that handicapped individuals may not be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.

vii. Executive Order 11063: as amended by Executive Order 12259, which requires equal opportunity in housing and related facilities provided by federal financial assistance.

viii. Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits contractors and subcontractors from discriminating in employment against individuals with disabilities and requires employers take affirmative action to recruit, hire, promote, and retain these individuals.

~~ix. The Vietnam Era Veterans' Readjustment Act of 1974, Section 402 34.1. The Grantee shall comply with the provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Section 402, as amended. Section 402 prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam-era veterans and qualified special disabled veterans. ***Protected veteran*** means specifically, a veteran who may be classified as a "disabled veteran," "recently separated veteran," "active duty wartime or campaign badge veteran," or an "Armed Forces service medal veteran," as defined in 41 CFR 60-300.2(q).~~

23. **Drug Free Workplace:** By signing this agreement, the contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended. This requirement is applicable to all Contracts and Subcontracts of $100,000 or more.

24. **Certification of Nonsegregated Facilities:** The contractor certifies that the entity does not maintain or provide for employees any segregated facility at any of its establishments, and those under the contractors control. Contractor further certifies that they will not maintain or provide for employment segregated facilities at any of the Contractor's establishments, and Contractor will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of the contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor further agrees they will obtain identical certification from proposed subcontractors prior

to the awards of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that Contractor will retain such certification in their files; and that they will forward this notice to such proposed subcontractors.

25. **Architectural Barriers Act and Americans with Disabilities Act:** The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, people with physical disabilities. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996, and that meets the definition of residential structure as defined in 24 CFR 40.2, or the definition of building as defined in 41 CFR 101-19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in appendix A to 41 CFR part 101-19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2333 (voice) or (202) 708-1734 (TTY).

26. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** 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 USC § 1701u). Contractors and subcontractors must address the Section 3 employment work hours benchmarks for Section 3 Workers and Targeted Section 3 Workers as established by the U.S. Department of Housing and Urban Development at 24 CFR Part 75.

    a. This is a Section 3 covered project. Section 3 projects mean housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds $300,000. The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

    b. 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 the U.S. Department of Housing and Urban Development (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.

    c. The parties to this contract will comply with HUD's regulations as set forth in 24 CFR Part 75, 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 75 regulations.

    d. The Section 3 requirements apply to all contractors and subcontractors performing work in connection with a Section 3 covered project. Contractor means any entity entering into a contract with (a) a recipient to perform work in connection with work in connection with a Section 3 project; or (b) a subrecipient for work in connection with a Section 3 project. Subcontractor means any entity that has a contract with a Contractor to undertake a portion of the contractor's obligation to perform work in connection with a Section 3 project.

e. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of regulations under 24 CFR Part 75.

f. 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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

g. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

27. **Lead-Based Paint:** Contractor shall carry out all work within the procedures established by the Grantee with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851- 4856), and implementing regulations at 24 CFR Part 35.

28. **Procurement of Recovered Materials:** The Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procurement only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. **Compliance with Air and Water Acts:** (Applicable to construction contracts and related subcontracts exceeding $100,000)

    During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

    In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

    a. A stipulation by the contractor or subcontractors, that any facility to be utilized in the performance of any non-exempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

    b. Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.

c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

d. Agreement by the contractor that they will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the contractor will take such action as the government may direct as a means of enforcing such provisions.

In no event shall any amount of the Assistance be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

30. **Energy Policy and Conservation Act:** In carrying out this agreement, the contractor agrees to comply with the requirements of mandatory standards and policies relating to energy efficiency which are contained in the State of South Dakota's energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (PL 94-163, 89 Statutes 871).

31. **Federal Labor Standards Provisions:** *(Applicable to construction contracts in excess of $2,000)*

This contract will be funded in whole or in part with federal housing and community development funds. The Federal Labor Standards Provisions, including prevailing wage requirements of the Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act will be enforced. (see attached HUD Form 4010 Federal Labor Standards).

32. **Equal Opportunity for VEVRAA Protected Veterans** *(Applicable to construction contracts of $100,000 or more)*

1. The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as "protected veteran(s)") in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures.

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

iii. Rates of pay or any other form of compensation and changes in compensation.

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

v. Leaves of absence, sick leave, or any other leave.

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.

vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

viii. Activities sponsored by the contractor including social or recreational programs.

ix. Any other term, condition, or privilege of employment.

2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The “contractor official” may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.

5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

6. As used in this clause:

   i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

   ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

   iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by

the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

11. The contractor will include the provisions of this clause in every subcontract or purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
12. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.
13. The definitions set forth in 41 CFR 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

ATTACH HUD 4010 FORM TO THE PDF DOCUMENT

ATTACH APPLICABLE FEDERAL PREVAILING WAGE DECISION