

First Amendment to Agreement
#CA2320991 - 1

13th **THIS AMENDMENT** (hereinafter "Amendment") is made and entered into this day of April, 2023 by and between Shelby County Government (hereinafter "COUNTY") and VuCon, LLC. (hereinafter "CONTRACTOR").

WHEREAS, the parties entered into a Construction Contract (hereinafter "Contract") dated January 11, 2023 for construction repairs of the Big Creek Scour Hole Project with a contract amount of \$6,372,634.00; and

WHEREAS, the parties now desire to enter into this Amendment to amend paragraph 26 of the contract and include Section 3 requirements, attached hereto as Exhibit A and incorporated herein by reference.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:


1. The Section 3 requirements of paragraph 26, attached hereto as Exhibit A, are incorporated into this Contract and shall be adhered to in compliance with the United States Department of Housing and Urban Development (HUD) National Disaster Resilience Competition (NDRC) Grant.
2. There is no additional cost to the project for this Amendment.
3. CONTRACTOR shall not be permitted or authorized to incur costs to the COUNTY beyond the extent that purchase orders have been issued on approved contracts and/or purchase orders prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of COUNTY contracts or purchases without prior, expressly written, appropriate authorization pursuant to COUNTY purchasing procedures and rules and regulations. COUNTY is not obligated to pay nor shall CONTRACTOR be entitled to receive payments for contract fees and expenses incurred in violation of this provision.
4. The terms and conditions of the original Contract, except as amended herein, shall remain in full force and effect.

Funding for this Contract is provided by federal grant funds awarded through the NDRC Grant Program.

IN WITNESS WHEREOF, the parties have executed this Amendment on the _____ day of _____ 2023

APPROVED AS TO FORM
AND LEGALITY:

SHELBY COUNTY GOVERNMENT:


Contract Administrator
Assistant County Attorney


LEE HARRIS, MAYOR

VuCon, LLC


By: 
Title: Sec/Treas

CORPORATE ACKNOWLEDGMENT

STATE OF TENNESSEE
COUNTY OF Shelby County Government

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Albert Johnson, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the VuCon, LLC the within named bargainer, a corporation, and that he as such Sec/Treas, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Albert Johnson.

WITNESS my hand and official seal at office this 10th day of April, 2023.


Notary Public

My Commission Expires: 12/16/25

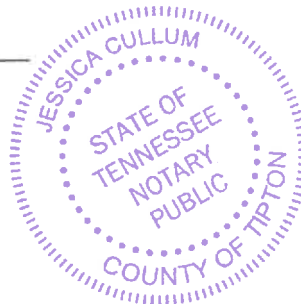


Exhibit A

26. SECTION 3 EMPLOYMENT AND CONTRACT OPPORTUNITIES

The Contractor hereby agrees, warrants, and assures compliance with the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701u and 42 U.S.C. 3535(d)) as found at 24 CFR Part 75 (Section 3 Final Rule). 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, and to business concerns which provide economic opportunities to low- and very low-income persons.

Shelby County encourages responses from consultants qualifying as Section 3 Business Concerns.

Section 3

Forms, Reports, and Policy

This project is governed under Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u; 42 U.S.C. 3535(d); and 24 CFR Part 75], which provides preference to low-to very low-income residents of the local community (regardless of race or gender, and the businesses that substantially employ these person, for new employment, training and contracting opportunities.

Please note that as November 30, 2020, HUD has issued and made effective a “Final Rule” on Section 3 goals and requirements. While HUD does not require changes on Section 3 requirements to contracts that were in place prior to the Final Rule becoming effective, contracts executed after November 30, 2020 must transition to the updated Section 3 benchmarks, definitions, and reporting processes found in 24 CFR Part 75. The Section 3 proposed and Final Rule changes are outlined under [85 FR 61524 \(Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses\)](#), and specific changes pertaining to bidders’ or applicants’ requirements due to the Section 3 Final Rule requirements will be outlined in the forms and reports below.

Required Section 3 Forms and Reports

Section 3 Opportunity Plan

A Section 3 Opportunity Plan must be completed by bidders or applicants seeking funding from the Shelby County Division of Planning and Development and the Division of Public Works for a Section 3 covered project. The Section 3 Opportunity Plan must be submitted with the project bid or grant application.

Forms included in the Section 3 Opportunity Plan

1. Outreach Efforts to Section 3 Businesses
2. Section 3 Business Certification Form
3. Commitment to Contracting

A Section 3 Opportunity Plan is included.

Section 3 Summary Report

Project award recipients are required to complete and submit a Section 3 Summary Report each month throughout the life of the project. Information is cumulative and should run through the last day of the reporting month. Example: A report period of May 2015 will document required information from the start of the project through the last day of the May 2015.

A Section 3 Summary Report is included.

Section 3 Business Certification Form

Preferential contract consideration will be granted to Section 3 businesses. The Section 3 Business Certification Form must be completed by businesses seeking Section 3 status.

The Section 3 Business Certification Form must be completed by businesses listed as Section 3 in the Section 3 Opportunity Plan. The certification form must also be submitted with the Section 3 Summary Report when a contract is issued to a Section 3 business after the start of the project.

A Section 3 Business Certification Form is included.

Section 3 Opportunity Plan

Understanding Section 3

Section 3 is a Local Jobs and Contracting Initiative Utilizing Federal Housing Grant Funds.

What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

HUD's regulations state that "to the greatest extent feasible," businesses and employers working on select HUD-funded projects must make a good faith effort, or "best efforts," to train and employ low-to very low-income individuals in the area (called "Section 3 residents") and also to contract with business identified as Section 3.

What Do "Best Efforts" and "to the Greatest Extent Feasible" Mean?

HUD has determined not to define the difference between these two terms but rather to increase the emphasis on outcomes as a result of these efforts. A contractor's reported results will be compared to the outcome metrics defined by the benchmarks noted below. An evaluation and documentation of the level of effort expended by those contractors under Section 3 covered projects and contracts that fail to meet the benchmark safe harbor will take place to ensure that the statutory terms are being properly enforced. HUD has included a list of examples in the regulation at 24 CFR Part 75.25(b), including engagement in outreach efforts to generate job applicants who are Targeted Section 3 workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

Revised Section 3 Final Rule Definitions

Section 3 Worker

A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD (see Question 6 of this part I of these FAQs, below);
2. The worker is employed by a Section 3 business concern (see Question 5 of part I, below); or
3. The worker is a YouthBuild participant.

Targeted Section 3 Worker

A Section 3 targeted worker for Housing and Community Development Financial Assistance projects is a Section 3 worker who:

1. is employed by a Section 3 business concern; or
2. currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
 - b. A YouthBuild participant.

Section 3 Business Concern

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

What is a Section 3 project and what funding thresholds apply to Section 3 covered financial assistance?

Section 3 projects are 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 a threshold of \$200,000. 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. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

Any Final Rule-applicable contracts, regardless of contract value, must comply with Section 3 requirements once a project, as notated above, exceeds the \$200,000 threshold for assistance funding.

In summary, the obligations of Section 3 under the Final Rule are:

1. **Employment and Training:** To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located AND, where feasible, priority for these opportunities should be given to Section 3 workers residing within the service area or the neighborhood of the project and participants in YouthBuild programs.
2. **Contracting:** To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located AND, where feasible, priority for these contracting opportunities should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and YouthBuild programs.
3. **Reporting:** For Section 3 projects, report in a manner prescribed by HUD:
 - a. The total number of labor hours worked;

Section 3 Opportunity Plan

Outreach Efforts to Section 3 Businesses

Applies to all projects

Documentation of efforts to engage Section 3 businesses must be provided with responses to RFQs, RFPs, and grant applications.

Project Name Big Creek Scour Hole Project

This form is to be completed by bidders or applicants seeking funding under a Shelby County Division of Planning and Development/Department of Housing Section 3 covered program (or any other Shelby County Division/Department when Section 3 applies).

Organization VuCon, LLC

Submitted By Albert Johnson

The following businesses identified as Section 3 were contacted to determine capacity and availability to work on the above-listed project:

- Company Precise Concrete Works, LLC
Contact Kenechia Corodine
Telephone /Email 901 774 8010 / kenechia@2precise.com
Date(s) Contacted 3/24/23 phone & email Quote Provided (Y/N) N
Follow-up Action and Company Response 3/28/23 phone & email follow up
No answer / No response

2. Company ACOT Associates Group, LLC
Contact Solomon Akinduro
Telephone /Email 901 590 0227 / ds@acot.us.com
Date(s) Contacted 3/24/23 phone & email Quote Provided (Y/N) N
Follow-up Action and Company Response _____
3/28/23 phone & email follow up
No answer / No response

3. Company CMJ
Contact Charlotte Jefferson
Telephone /Email 901 864 4543 / cmjcleaningservices16@gmail.com
Date(s) Contacted 3/24/23 Quote Provided (Y/N) Y
Follow-up Action and Company Response _____
Quote Provided 3/24/23

4. Company Swept Away Cleaning, LLC
Contact Chlonda Baston
Telephone /Email 901 650 3206 / sweptawaycleaning2017@gmail.com
Date(s) Contacted 3/24/23 Quote Provided (Y/N) Y
Follow-up Action and Company Response _____
Quote Provided 3/24/23

(Attach additional sheets if necessary)

Compliance

The failure of the bidder or applicant to comply with the Section 3 Opportunity Plan shall be considered an event of default under the contract agreement.

Acknowledged by

Albert Johnson Sec/Treas
PRESIDENT OR AUTHORIZED OFFICER (PLEASE PRINT)

ASJ 3/23/23
SIGNATURE DATE

V4Con, LLC
BUSINESS OR ORGANIZATION NAME

Section 3 Opportunity Plan

(TO BE COMPLETED FOR COMMUNITY DEVELOPMENT PROJECTS)

PURPOSE

The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u and 42 U.S.C. 3535(d)) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

Vu Con LLC

BIDDER OR APPLICANT

Big Creek Scour Hole Repair Project

RFQ # and PROJECT NAME

Albert Johnson

(901) 454-0522

albert@vuconllc.com

CONTACT NAME

TELEPHONE

EMAIL (IF APPLICABLE)

Requirements

The submitter of this Section 3 Opportunity Plan hereby agrees to comply with all of the provisions of Section 3 as set forth in 24 CFR 75, which implements Section 3 Final Rule requirements.

The Section 3 Opportunity Plan must be submitted with the Request For Qualification (RFQ), Request For Proposal (RFP), contact response, or grant application to Shelby County's Division of Planning and Development/Department of Housing or the appropriate Division/Department issuing the applicable request.

If a contract is awarded, a Section 3 Summary Report identifying progress in meeting the goals established in this Plan must be submitted monthly for projects throughout the contract period. The Section 3 Summary Report shall be submitted no later than 10 days after the end of each calendar month of the contract (e.g. January 10th, February 10th, etc.). For any goal not met, the report shall identify other economic opportunities that the contract recipient has or intends to provide.

The failure of the contract recipient to comply with the approved Plan shall be considered an event of default under the contract agreement.

Commitment to Contracting

Applies to all projects

Each applicant or bidder for a construction or labor-related contract must complete this Plan and submit all relevant information required herein. The following contracting requirements must be satisfied to the greatest extent feasible:

- Ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located, AND..
- Where feasible, priority for these contracting opportunities should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and YouthBuild programs.

The following documents must be completed and submitted with this Plan:

- Outreach Efforts to Section 3 Businesses
- Section 3 Business Certification Form
- Section 3 Commitment to Contracting

Commitment to the Employment and Training

Applies to all projects

Each bidder or applicant for a construction or labor-related contract must complete this Plan and submit all relevant information required herein. Bidders and applicants must satisfy the following labor hour requirements to the greatest extent feasible:

- Ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located, AND
- Where feasible, priority for these opportunities should be given to Section 3 workers residing within the service area or the neighborhood of the project and participants in YouthBuild programs.
- 25 percent (25%) or more of the total number of labor hours worked by all workers on a Section 3 project shall be Section 3 workers, with 5 percent (5%) or more of the total number of labor hours worked by all workers on a Section 3 project being identified as Targeted Section 3 workers.

- b. The total number of labor hours worked by Section 3 workers; and
- c. The total number of labor hours worked by Targeted Section 3 workers

Section 3 Outcome Benchmarks: Applies to all CDBG Projects

Applies to all Projects

Section 3 requires that award recipients reach the following outcome benchmarks to the greatest extent feasible in an effort to meet the safe harbor requirements for housing and community development financial assistance projects:

- *Section 3 workers* must encompass 25 percent or more of the total number of labor hours worked by all workers on a Section 3 project, *with*
- *Targeted Section 3 workers* encompassing 5 percent or more of the total number of labor hours worked by all workers on a Section 3 project (the 5 percent is included as part of the 25 percent threshold)..
- While there is no longer any percentage goal for work provided to Section 3 business concerns, Section 3 workers who are employed by Section 3 business concerns count toward Targeted Section 3 worker labor hours (5 percent threshold).

Beyond this initial benchmark, HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

If recipients do not meet the benchmark goals for employment or contracting, they must report in a method prescribed by HUD program offices on the qualitative nature of its activities and those its contractors and subcontractors pursued per 24 CFR Part 75.25(b). Such qualitative efforts may for example, include but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

Section 3 benchmarks will consist of the following two ratios:

- The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.
- The number of labor hours worked by Targeted Section 3 workers as defined in 24 CFR Part 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.