

**CONCILIATION AGREEMENT
BETWEEN
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

AND

**BREAKELL INCORPORATED
2314 Patterson Avenue SW
P.O. Box 6414
Roanoke, VA 24017**

PART I : GENERAL PROVISIONS

1. This Conciliation Agreement (hereinafter "Agreement") is between the United States Department of Labor/Office of Federal Contract Compliance Programs (hereinafter "OFCCP") and Breakell Incorporated, located at 2314 Patterson Avenue, in Roanoke, Virginia 24017 (hereinafter "BREAKELL").
2. The violations identified in this Agreement was found during the compliance review of BREAKELL which commenced on September 30, 2009, and they were specified in a Notice of Violations issued on December 21, 2009. OFCCP alleges that BREAKELL has violated Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.
3. This Agreement does not constitute an admission by BREAKELL of any violation of Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 USC 4212), or Section 503 of the Rehabilitation Act of 1973, as amended, and implementing regulations.
4. The provisions of this Agreement will become part of BREAKELL's Affirmative Action Program. Subject to the performance by BREAKELL of all promises and representations contained herein, all violations identified in this Agreement shall be deemed resolved. However, BREAKELL is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. BREAKELL agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses and examine and copy documents, as may be relevant to the matter under investigation and pertinent to BREAKELL's compliance. BREAKELL shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve BREAKELL from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 4212) and/or Section 503 of the Rehabilitation Act of 1973, as amended, and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.

7. **BREAKELL agrees that there will be no retaliation of any kind against any beneficiary of this Agreement, or against any person who has provided information or assistance or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 4212) and/or Section 503 of the Rehabilitation Act of 1973, as amended.**
8. **This Agreement will be deemed to have been accepted by the Department of Labor on the date of signature by the District Director, OFCCP, Richmond District Office, unless the Deputy Assistant Secretary for OFCCP indicates otherwise within 45 days of the District Director's signature of this Agreement.**
9. **If, at anytime in the future, OFCCP believes that BREAKELL has violated any portion of this Agreement during the term of this Agreement BREAKELL will be promptly notified of that fact in writing. This notification will include a statement of facts and circumstances relied upon in forming that belief. In addition, the notification will provide BREAKELL with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges such a delay would result in irreparable injury.**

Enforcement proceedings for violations of this Agreement may be initiated at any time after the 15 day period has elapsed (or sooner if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes BREAKELL has violated the Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violation resolved in this Agreement. Liability for violation of this Agreement may subject BREAKELL to sanctions set forth in Section 209 of the Executive Order, and 41 CFR 60-250.66 or 60-741.66 and/or appropriate relief.

PART II: SPECIFIC PROVISIONS

1. **VIOLATION: BREAKELL failed to establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when it had opportunities available, and to maintain a record of the organizations' responses. This is a violation of 41 CFR 60-4.3(a)7b.**

REMEDY: BREAKELL will establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when it or its unions have opportunities available, and maintain a record of the organizations' responses.

2. **VIOLATION:** BREAKELL failed to direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving BREAKELL'S recruitment area and employment needs. This is a violation of 41 CFR 60-4.3(a)7.i.

REMEDY: BREAKELL will direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving BREAKELL's recruitment area and employment needs.

3. **VIOLATION:** During the timeframe, March 1, 2009 through August 31, 2009, Breakell failed to list six (6) employment openings that were not executive and top management positions, were not filled within BREAKELL's organization and were not positions lasting three days or less. BREAKELL failed to list these six (6) openings with the local employment service office of the state employment security agency. This is a violation of 41 CFR 60-300.5(a) 2 through 6.

REMEDY: Within fifteen (15) days from the date of signature by the District Director for OFCCP of this Conciliation Agreement, BREAKELL will begin to list all appropriate employment openings with the local office of the state security agency, which is the Virginia Employment Commission, located at 1351 Hershberger Road, in Roanoke, Virginia. BREAKELL will list employment openings with the Virginia Employment Commission at least concurrently with the use of any other recruitment source or effort, in accordance with the requirements contained in the regulations.

4. **VIOLATION:** BREAKELL failed to compensate two (2) minorities in the (b) (7)(C) job title commensurate with similarly situated non-minorities. This is a disparate treatment violation based on race. The class was defined through an applied statistical formula designed to identify minorities who would have earned higher pay rates but for their minority status. This is a violation of 41 CFR 60-1.4(a) (1).

REMEDY: Within sixty (60) days of the effective date of the Conciliation Agreement, BREAKELL will implement the following:

- i. Pay (b) (7)(C) and (b) (7)(C) back pay and interest of \$7,552.03. Specifically, (b) (7)(C) and (b) (7)(C) will each receive a back pay check for \$6,473.68 and \$1078.35, respectfully. In addition, BREAKELL will adjust (b) (7)(C) hourly wage from (b) (4) to (b) (4) and (b) (7)(C) hourly wage from (b) (4) to (b) (4). The back pay, interest, and annualized wage adjustments are listed on attachment 1.

- ii. Provide OFCCP with documentation of the cancelled checks issued to (b) (7)(C) and (b) (7)(C). In addition, BREAKELL will provide verification of the hourly wage adjustments for both (b) (7)(C) and (b) (7)(C).
- iii. BREAKELL will examine and monitor its compensation policies and practices to ensure uniformity and eliminate discrimination against minorities in wages.

BREAKELL agrees that these violations will not be repeated in the future.

PART III: REPORTING

BREAKELL agrees to provide OFCCP, Richmond District Office, with one (1) compliance report, within sixty (60) days of the executed Conciliation Agreement. The report will include the cancelled checks issued to (b) (7)(C) and (b) (7)(C). In addition, employee status forms which indicates that (b) (7)(C) earns an hourly wage of (b) (4) and (b) (7)(C) earns an hourly wage of (b) (4).

BREAKELL further agrees to provide one (1) annual progress report which identifies viable minority and female recruitment sources utilized as employment openings occurred, as prescribed in remedies #1 and #2.

In addition, BREAKELL will provide documentary evidence of listing all job openings, as defined by 41 CFR 60-300.5(a)2 through 6, with the Virginia Employment Commission office wherein the openings occur; along with a report on the number of referrals/responses and the number of hires, providing for the hires, to the extent known, the number of Vietnam-era and other veterans covered under OFCCP's regulations.

This report will be due on January 15, 2011, and shall cover the period of January 1, 2010 through December 31, 2010.

BREAKELL will send the reports to:

U.S. Department of Labor
Office of Federal Contract Compliance Programs
ATTN: (b) (7)(C), Compliance Officer
Federal Building, 400 N. 8th Street, Suite 552
Richmond, Virginia 23219-4822

This Conciliation Agreement shall remain in full force and effect until such time as BREAKELL is found by OFCCP to have met all the terms of this Agreement, or one year after execution by all parties concerned, whichever occurs first.

PART IV - SIGNATURES

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Breakell Incorporated., located at 2314 Patterson Avenue, in Roanoke, Virginia 24016.

JAN 4, 2010
DATE

January 5, 2010
DATE

(b) (7) (c)
[Redacted]

(b) (7) (e)
[Redacted]

Mr. Jeffrey M. McClellan
Vice President, COO
BREAKELL INCORPORATED
2314 Patterson Avenue, SW
Roanoke, Virginia 24016

Richmond District Office

1/6/10
DATE

1/6/10
DATE

(b) (7) (c)
[Redacted]

(b) (7) (c)
[Redacted]

George House, III
Assistant District Director
Richmond District Office

William Gerald Thomas
District Director
Richmond District Office

(b) (7) (c)
[Redacted]

MICHELE HODGE
Acting Regional Director
MID-ATLANTIC REGION
PHILADELPHIA, PA

1/7/10
DATE

ATTACHMENT 1

Employee Name	Position	Backpay	Interest	Total Backpay	Total Salary Adjustment
(b) (7)(C)		\$1,040.00	\$ 38.35	\$1078.35	\$33280
		\$6,240.00	\$233.68	\$6473.68	\$37440

Mid-Atlantic Region Conciliation Agreement Financial Settlement

Contractor: Breakell, Inc.
Control Number: R00154882

Back pay: MINORITY Carpenters

1. Co-hort Totals: 2
2. Victim Totals: 2
3. Factors Used In Back pay Calculations:
 - a. Co-horts: 2
 - b. Liability Period-10/1/07-9/30/09
 - c. Average hours worked-2080 per year
 - d. Backpay Victim # 1- \$2.00/hour between 10/1/07 and 9/30/08 for a total of \$4160.00; plus \$1.00/hour between 10/1/08 and 9/30/09 for backpay in the amount of \$2080.00. Additionally included is interest in the amount of \$233.68 for the 2 year period.
 - e. Backpay Victim #2- \$1.00 per hour between April 1, 2008 and October 31, 2008 for a total of \$1040.00. Interest of \$38.35 is included also.
 - f. Salary Adjustments: Salary for Victim # 1 will increase from \$15.00/hour to \$18.00/hour (\$4160 total annual); salary for Victim #2 will be raised to \$16.00/hour from \$15.00/hour (\$2080 total annual).

Total Back pay	=\$7280.00
Total Interest	=\$272.03
Total Settlement	=\$7552.03
Total Mitigated Back pay	= No mitigation

4. Types of Benefits Considered: No other benefits were considered since employees received benefits coverage throughout the liability period.

Total Back pay plus interest	=	\$7552.03
Total Annualized Salary Adjustments	=	\$6240.00
Total Estimated Settlement	=	13792.03