

**Conciliation Agreement  
Between the U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
and  
PALP, Inc. dba Excel Paving Company  
2230 Lemon Avenue  
Long Beach, California 90806**

**PART I: General Provisions**

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and PALP, Inc. dba Excel Paving Company (hereinafter Excel Paving) located at 2230 Lemon Avenue, Long Beach, California.
2. The violations identified in this Agreement were found during a compliance evaluation of Excel Paving which began on February 10, 2011 and they were specified in a Notice of Violation issued on July 18, 2011. OFCCP alleges that Excel Paving has violated Executive Order 11246, as amended and implementing regulations at 41 CFR Chapter 60 due to specific violations cited in Part II below.
3. This Agreement does not constitute an admission by Excel Paving of any violation of Executive Order 11246, as amended, and implementing regulations.
4. The provisions of this Agreement will become part of Excel Paving's AAP. Subject to the performance by Excel Paving of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of Excel Paving with all OFCCP programs will be deemed resolved. However, Excel Paving 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. Excel Paving 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 Excel Paving compliance. Excel Paving shall permit access to its premises during normal business hours for these purposes.
6. Nothing herein is intended to relieve Excel Paving from the obligation to comply with the requirements of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. Excel Paving 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 Section 503 of the Rehabilitation Act of 1973, as amended,

and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director for OFCCP, unless the Director or Regional Director for OFCCP indicates otherwise within 45 days of the District Director's signature on this Agreement.
9. If at any time in the future, OFCCP believes that Excel Paving has violated any portion of this Agreement during the term of this Agreement, Excel Paving will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Excel Paving with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation 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 that Excel Paving has violated this Conciliation Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject Excel Paving to sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief.

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**PART II: Specific Provisions**

1. **VIOLATION:** Excel Paving failed to provide equal employment opportunity for a female applicant based on gender in its hiring process for a Laborer position during the period July 1, 2010 through December 31, 2010, in violation of 41 CFR 60-1.4(a)(1) and 41 CFR 60-20.3.

Personnel records, employment applications, interviews of managers, employees and the rejected applicant gathered during the above review period show that Excel Paving failed to consider a qualified female applicant and continued to hire males when there were opportunities.

**REMEDY:** Excel Paving will revise its personnel practices and procedures to ensure that the qualified female applicant for (b) (7) (c) position is afforded equal employment opportunity for selection. Excel Paving will also agree to provide the following "make-whole relief" to the female applicant:

- a) **Location and Notification:** Within 15 days after the effective date of this Agreement, Excel Paving agrees to notify (b) (7) (c) of her rights under this Agreement by sending a certified letter<sup>1</sup> to her address notifying her of this Conciliation Agreement and providing her with a Verification Form<sup>2</sup> requesting current address, telephone number, social security number, and expression of interest in pursuing an employment opportunity as a Laborer. Excel Paving will also include a Release of Claims,<sup>3</sup> an Employment Application Form and a W-4 form with the notification letter. (b) (7) (c) must return the completed Verification Form, Release, and, if appropriate, Employment Application Form, to Michele Drakulich at Excel Paving within 15 days of receipt of the certified letter or forfeit any consideration for back pay or a job offer.

Excel Paving will promptly notify OFCCP within 15 days after its initial mailing to (b) (7) (c) if she could not be located. OFCCP will have an additional 15 days from receipt of notice from Excel Paving to locate (b) (7) (c) and to provide contact information to Excel Paving. Within 3 days of receipt of OFCCP's contact information, Excel Paving will notify (b) (7) (c) and again provide a Verification Form, Release, Employment Application Form and W-4 form. (b) (7) (c) will have 30 days after receipt of the notification letter to respond.

If Excel Paving does not receive a response within 30 days of (b) (7) (c) receipt of the notification letter, such lack of a response will be deemed to constitute a rejection of any financial settlement and job offer set forth in paragraph (b) and (c).

- b) **Financial Settlement:** Within 90 days (but not earlier than 45 days) from the effective date of this Agreement, Excel Paving will provide total back pay in the amount of

<sup>1</sup> Attachment A - Notification Letter

<sup>2</sup> Attachment B - Address and Social Security Verification and Employment Interest Form

<sup>3</sup> Attachment C - Release of Claims

\$3,856.40 and interest in the amount of \$166.64 for a total financial settlement of \$4,023.04, provided that Excel Paving has received both the verification form and properly executed release. Such payment will constitute a full settlement of all financial claims related to this violation. Excel Paving will submit to the OFCCP documentation of payment of the financial settlement in accordance with the terms contained in "PART III: Reporting", of this Agreement. The payment will be made in a lump sum to (b) (7) (c) less appropriate withholding deductions. Excel Paving will send (b) (7) (c) an appropriate tax form (W-2).

- c) **Job Offer:** After the final response period has expired and as job openings become available, Excel Paving agrees to extend a bona fide written job offer for the (b) (7) (c) position to (b) (7) (c) if she expresses an interest in pursuing an employment opportunity with the company.

Excel Paving agrees to allow (b) (7) (c) 48 hours in which to accept or reject the job offer. If (b) (7) (c) accepts the offer of employment she will be given up to 14 days to report to work.

If hired, Excel Paving agrees to pay (b) (7) (c) the prevailing wage, overtime, all applicable benefits, and provide all regular and on-the-job training for the (b) (7) (c) position. Excel Paving agrees to make available to the OFCCP records regarding the job offer and hire made to (b) (7) (c).

- d) **Employment Process:** Excel Paving agrees to take proactive measures to ensure that this violation does not recur. Within 45 days from the effective date of this Agreement, Excel Paving agrees to do the following:

1. Continue reviewing its application and selection criteria and ensure that they are in technical compliance with the Uniform Guidelines on Employee Selection Procedures as provided in 41 CFR 60-3.
2. Continue ensuring that job qualifications are uniformly applied to all applicants.
3. Provide training on compliance with Executive Order 11246, as amended, and its implementing regulations, to supervisory and management employees involved in Excel Paving's selection process.
4. Review its selection procedures annually to ensure nondiscriminatory selection practices are followed.
5. Continue performing adverse impact analyses, at least annually, to oversee and monitor its selection process and placement results.

Excel Paving will revise its selection process to ensure non-discrimination. Excel Paving shall periodically monitor its selection process at each phase to ensure non-discriminatory selection and hiring practices.

2. **VIOLATION:** Excel Paving failed to provide equal opportunity to a female employee based on gender in its work hour distribution process for (b) (7) (c) during the period July 1, 2010 through December 31, 2010, in violation of 41 CFR 60-1.4(a)(1) and 41 CFR 60-20.3.

Personnel records, interviews of managers, employees and the statistical data gathered during the above review period show that Excel Paving denied equal treatment to the female employee and failed to provide the same opportunities that were provided to her male counterparts.

**REMEDY:** Excel Paving will revise its work assignment practices and procedures to ensure that the female employee is afforded the same opportunities as those of her male counterparts. Excel Paving will also agree to provide the following "make-whole relief" to the female employee:

- a) **Location and Notification:** Within 15 days after the effective date of this Agreement, Excel Paving agrees to notify (b) (7) (c) of her rights under this Agreement by sending a certified letter<sup>4</sup> to her address notifying her of this Conciliation Agreement. Excel Paving will also include a Release of Claims<sup>5</sup> with the notification letter. (b) (7) (c) must return the completed Release to Michele Drakulich at Excel Paving within 15 days of receipt of the certified letter or forfeit any consideration for back pay.

Excel Paving will promptly notify OFCCP within 15 days after its initial mailing to (b) (7) (c) if she could not be located. OFCCP will have an additional 15 days from receipt of notice from Excel Paving to locate (b) (7) (c) and to provide contact information to Excel Paving. Within 3 days of receipt of OFCCP's contact information, Excel Paving will notify (b) (7) (c) and again provide a Release form. (b) (7) (c) will have 30 days after receipt of the notification letter to respond.

If Excel Paving does not receive a response within 30 days of (b) (7) (c) receipt of the notification letter, such lack of a response will be deemed to constitute a rejection of any financial settlement set forth in paragraph (b).

- b) **Financial Settlement:** The financial settlement of \$16,161.75 is a negotiated amount that represents total back pay in the amount of \$15,105.26 and interest in the amount of \$1,056.49 for a total financial settlement of \$16,161.75. Such payment will constitute a full settlement of all financial claims related to this alleged violation. Excel Paving will submit to the OFCCP documentation of payment of the financial settlement in accordance with the terms contained in "PART III: Reporting", of this Agreement, provided that Excel Paving has received the properly executed release. The payment will be provided to (b) (7) (c) within ninety (90) days after the

<sup>4</sup> Attachment A - Notification Letter

<sup>5</sup> Attachment C - Release of Claims

effective date of this agreement.

c) **Employment Process:** Excel Paving agrees to take proactive measures to ensure that this violation does not recur. Within 45 days from the effective date of this Agreement, Excel Paving agrees to do the following:

1. Continue reviewing its work assignment criteria and ensure that they are in technical compliance with the Uniform Guidelines on Job Assignments Procedures as provided in 41 CFR 60-20.3.
2. Continue ensuring that job criteria are uniformly applied to all employees.
3. Provide training on compliance with Executive Order 11246, as amended, and its implementing regulations, to supervisory and management employees involved in Excel Paving's work assignment process.
4. Review its assignment procedures annually to ensure nondiscriminatory assignment practices are followed.
5. Continue performing adverse impact analyses, at least annually, to oversee and monitor its assignment process and results.

3. **VIOLATION:** Excel Paving failed to audit its recruitment practices as follows:

- a) Establish and maintain a current list of minority and women's recruitment sources, provide written notification to these recruitment sources and community organizations when it or its unions had opportunities available, and maintain a record of the organizations' responses as required by 41 CFR 60-4.3(a)7.b.
- b) Maintain a file of the name, address, and telephone number of each minority and female walk-in applicant and minority or female referral from a union, recruitment source, or community organization, and the action taken with respect to each individual as required by 41 CFR 60-4.3(a)7.c.
- c) Direct its recruitment efforts, both oral and written, to minority, women's, and community organizations, to schools with minority and women students, and to minority and women recruitment and training organizations serving Excel Paving's recruitment area employment needs. Excel Paving should have sent written notification describing the openings, screening procedures and tests to be used in the selection process no later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, as required by 41 CFR 60-4.3(a)7.i.

**REMEDY:** Excel Paving will agree to perform the following:

- a) Establish and maintain a current list of minority and women's recruitment sources, provide written notification to these recruitment sources and community organizations when it or its unions have opportunities available, and maintain a record of the organizations' responses.
  - b) Maintain a file of the name, address, and telephone number of each minority and female walk-in applicant and minority or female referral from a union, recruitment source, or community organization, and the action taken with respect to each individual.
  - c) Direct its recruitment efforts, both oral and written, to minority, women's, and community organizations, to schools with minority and women students, and to minority and women recruitment and training organizations serving the contractor's recruitment area employment needs. Excel Paving should send written notification describing the openings, screening procedures and tests to be used in the selection process not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment sources.
4. **VIOLATION:** Excel Paving failed to conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities, and encourage these employees to seek or to prepare, through appropriate training, for such opportunities as required by 41 CFR 60-4.3(a)7.1.

**REMEDY:** Excel Paving will agree to conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities, and encourage these employees to seek or to prepare, through appropriate training, for such opportunities.

**Excel Paving agrees that these alleged violations will not be repeated.**

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### **PART III: Reporting**

In order for the OFCCP to monitor compliance with this Conciliation Agreement, Excel Paving agrees to furnish the U.S. Department of Labor, Office of Federal Contract Compliance Programs, Los Angeles District Office, 1640 S Sepulveda Blvd, Suite 440, Los Angeles, California 90025, with the following report:

<u>Report Due Date</u>	<u>Period Covered</u>
April 15, 2012	Effective date of Agreement through March 31, 2012

The progress report shall contain the following:

1. Documentation of monetary relief provided to (b) (7) (c) and (b) (7) (c) as specified in subparagraphs (b) of the Remedy to Violations 1 and 2. The documentation should include copies of all duly executed Releases and cancelled checks disbursed by Excel Paving to (b) (7) (c) and (b) (7) (c) or other equivalent documentation verifying that they were paid.
2. Copies of completed Verification and Employment Interest Form (Attachments C-1 and C-2) returned by (b) (7) (c) to Excel Paving.
3. Documentation of the bona-fide job offer made to (b) (7) (c). Such documentation will include the date of the job offer, the date the offer was accepted or rejected, the starting salary, and the name of the immediate supervisor.
4. Documentation that training on the selection and work assignment processes was provided to Excel Paving management and that such training addressed compliance with Executive Order 11246, as amended, and its implementing regulations. Include the date and location of training, names and positions of trainers, the names and positions of the managers who attended, and copies of training materials disseminated to attendees.
5. The total number of applicants and hires (applicant flow and hire logs) for the review period. The applicant log will show the name, specific race/ethnicity, gender, date of application, position applied for, referral source, and disposition of each applicant for each phase of the selection process. The hire log must show the name, specific race/ethnicity, gender, referral source, date of hire, and job title and classification;
6. Documentation of outreach and recruitment for females and minorities conducted internally and externally. This should include copies of recruiting efforts and the results.
7. Documentation of the evaluation of all minority and female personnel for promotional opportunities and appropriate training for such opportunities, which could include performance appraisals.

You may also include any other information you have prepared that would assist us in understanding and evaluating your Affirmative Action commitments.

**Termination Date:**

This Agreement shall remain in effect until April 30, 2012 or until OFCCP's written acceptance of the Progress Report, whichever date is later.

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**PART IV: Signatures**

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Excel Paving Company located at 2230 Lemon Avenue, Long Beach, California.

9-28-2011  
Date  
**(b) (7) (c)**  
BRUCE FLATT  
Vice President  
PALP, Inc. dba Excel Paving Company  
2230 Lemon Avenue  
Long Beach, California

10/5/11  
Date  
**(b) (7) (e)**  
Compliance Officer  
Office of Federal Contract  
Compliance Programs  
Los Angeles District Office

10/5/11  
Date  
**(b) (7) (c)**  
ROBERT DOLES  
Assistant District Director  
Office of Federal Contract  
Compliance Programs  
Los Angeles District Office

10/5/11  
Date  
**(b) (7) (c)**  
JANE SJHR  
District Director  
Office of Federal Contract  
Compliance Programs  
Los Angeles District Office