

## **CONCILIATION AGREEMENT**

**Between**

**THE U.S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

**And**

**GOWAN, INC.  
5550 AIRLINE DRIVE  
HOUSTON, TEXAS 77076**

### **I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Gowan, Inc. (Gowan) establishment located at 5550 Airline Drive, Houston, Texas 77076, beginning on December 16, 2020. OFCCP found that Gowan failed to comply with Executive Order 11246, as amended (E.O. 11246) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their implementing regulations at 41 Code of Federal Regulations (C.F.R.) Chapter 60.

OFCCP notified Gowan of the specific violations found and the corrective actions required in a Notice of Violations (NOV) issued on September 1, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and Gowan enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

### **II. General Terms and Conditions**

1. In exchange for Gowan's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Gowan violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Gowan's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Gowan will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.

3. Nothing in this Agreement relieves Gowan of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and/or VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Gowan and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.
5. Gowan agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the Houston District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after Gowan submits its final progress report required in Section IV, below, unless OFCCP notifies Gowan in writing before the expiration date that Gowan has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Gowan has met all of its obligations under the Agreement.
11. If Gowan violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-1.34 and 41 C.F.R. 60-300.63 will govern:
    - i. OFCCP will send Gowan a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. Gowan shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

- iii. If Gowan is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
  - iv. In the event of a breach of this Agreement by Gowan, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.
- b. Gowan may be subject to the sanctions set forth in Section 209 of the E.O. 11246, 41 C.F.R. 60-1.27, 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
- 12. Gowan neither admits nor denies any violation of the E.O. 11246, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
- 13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
- 15. Each party shall bear its own fees and expenses with respect to this matter.
- 16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
- 17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

### **III. Technical Violations and Remedies**

- 1. **VIOLATION:** OFCCP found that Gowan failed to include an acceptable Identification of Problem Areas section in its Affirmative Action Program (AAP) as required by 41 CFR § 60-2.17(b). Specifically, during the review period, Gowan failed to identify a problem in its hiring and selection process. More specifically, Gowan failed to recognize that its lack of recruitment from organizations capable of providing qualified job seekers and applicants; and its word-of-mouth hiring process resulted in a one-to-one applicant-to-hire ratio. Gowan also failed to identify the low representation of black and female employees in its workforce and the placement of

females in primarily administrative jobs as problem areas in its AAP. Gowan only has (b) (7)(E) black and (b) (7)(E) female out of (b) (7)(E) employees in its workforce. Of the (b) (7)(E) female employees, (b) (7)(E) work in administrative jobs (b) (6), (b) (7)(C), (b) (5)

REMEDY: Effective immediately, Gowan will identify problem areas with its employment process and low representation of black and female employees in the Identification of Problem Areas section of its AAP.

2. VIOLATION: Gowan failed to develop and execute action-oriented programs designed to correct problems areas identified and attain established goals and objectives, as required by 41 CFR 60-2.17(c). Specifically, Gowan failed to develop and execute action-oriented programs designed to increase the low representation of black and female employees in the contractor's workforce. Additionally, Gowan failed to remedy the problems found within its hiring process, including establishing recruitment sources capable of providing qualified job seekers and applicants.

REMEDY: Effective immediately, Gowan will develop and execute action-oriented programs designed to increase the low representation of black and female employees in the contractor's workforce. Gowan will also identify recruitment sources capable of providing qualified job seekers and applicants and will contact these organizations when employment opportunities became available. These programs and recruitment sources will be included in the AAP.

3. VIOLATION: OFCCP found that Gowan failed to maintain and have available records or other information showing whether the total selection process for each job group has an adverse impact in accordance with the requirements of 41 CFR § 60-3.15A(2) and 60-3.4. Specifically, during the review period, Gowan was unable to conduct an accurate adverse impact due to the one-to-one applicant to hire ratio.

REMEDY: Gowan will ensure that records are collected and maintained in accordance with regulatory requirements. For any record made, Gowan will identify the gender, race and ethnicity for employees, and where possible each job seeker or Internet applicant. Gowan will conduct adverse impact analyses, as required by 41 CFR § 60-3.15A and 60-3.4, on at least an annual basis for purposes of determining whether adverse impact exists against applicants based on race, gender, or ethnic group in hiring, promotion, termination, and other personnel activities. These analyses will be done by job for each group constituting at least 2% of the labor force in the relevant labor area or 2% of the applicable workforce. If adverse impact is identified in the total selection process, Gowan will evaluate each individual component of the selection process for adverse impact. If adverse impact is found to exist in any of the individual components of the selection process, Gowan will validate each such component in accordance with the Uniform Guidelines on Employee Selection Procedures or utilize selection procedures, which do not result in adverse impact.

4. **VIOLATION:** OFCCP found that Gowan failed to immediately list all employment openings, except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less, with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred which is in violation of 41 CFR 60-300.5(a)2-6. Specifically, during the period of September 1, 2019 through August 31, 2020 (review period), Gowan primarily recruited by word-of-mouth resulting in an applicant-to-hire ratio of one-to-one.

**REMEDY:** Effective immediately, Gowan will list all employment openings, except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less, as they occur with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to Gowan, as required by 41 CFR 60-300.5(a)2-6.

#### **IV. OFCCP Monitoring Period**

1. **Recordkeeping.** Gowan agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. Gowan will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Gowan Reports.**

- a. **Schedule and Instructions.** Gowan agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

Pursuant to Violations 1 and 2, Gowan will submit the following documentation 30 days from the effective date of this Agreement:

1. Modifications to the Identification of Problem Areas and the Action-Oriented Programs Section of Gowan's current Minority and Female Affirmative Action Program, specifying the recruitment efforts that will be taken to increase the representation of blacks and females in the workforce.

Pursuant to Violations 3 and 4, Gowan will submit two semi-annual progress reports to OFCCP. First semi-annual progress report will be due seven months from effective date of this Agreement and cover the six-month period from the effective date of this Agreement. Second report will be due 30 days after the end of the subsequent six-month period. The following information will be included in each semi-annual report:

1. A log of all job seekers during the relevant review period. This log will include name, race, gender and ethnic group; recruitment source, disposition, job group, position applied for, and position hired into, if applicable;
2. The total number of applicants and hires by job group, race, gender, and ethnicity during the reporting period, including part-time workers;
3. For each job group, the results of Gowan's analysis as to whether its total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, on those members of groups set forth in 41 CFR § 60-3.4B. Gowan must combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period;
4. For each case where the total selection process has an adverse impact, as defined in 41 CFR § 60-3.4D, the results of Gowan's evaluation of the individual components of the selection process for adverse impact;
5. The corrective actions Gowan implemented upon determining that any component of the selection process has an adverse impact on a particular race, gender or ethnic group; and
6. Supporting documents that show Gowan has listed all employment openings with the appropriate local state employment service office, employment security agency or appropriate employment service delivery system where openings occur, as applicable and in accordance with 41 CFR 60-300.5(a)2-6.

Gowan will submit reports to Karen N. Hyman, District Director, OFCCP Houston District Office, 2320 LaBranch Street, Suite 1103, Houston, TX 77004 and (b) (6), (b) (7)(C)@dol.gov. Gowan and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports Gowan provides in accordance with this Agreement are customarily kept private or closely-held, and Gowan believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Gowan will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Gowan's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify Gowan in writing within sixty (60) days of the date of the final progress report that Gowan has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Gowan within the allotted time that it has not fulfilled all of its obligations, this Agreement is

automatically extended until the date that OFCCP determines Gowan has met all of its obligations under the Agreement.

## V. SIGNATURES

The person signing this Agreement on behalf of Gowan personally warrants that he or she is fully authorized to do so, that Gowan has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Gowan.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Gowan.

(b) (6), (b) (7)(C)

FRED WASSON  
Chief Financial Officer and EEO Administrator  
Gowan, Inc.

Date: 10/14/21

(b) (6), (b) (7)(C)

KAREN N. HYMAN  
District Director  
Houston District Office

Date: 10/21/2021

(b) (6), (b) (7)(C)

LATOYA SMITH  
Assistant District Director  
Houston District Office

Date: 10/21/2021

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(E)  
Compliance Officer  
Houston District Office

Date: 10/21/2021