

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
MEC Distribution, LLC

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) MEC Distribution initiated a complaint investigation of MEC Distribution, LLC (MEC Distribution), located at 3949 Hwy 8, Suite 109 New Town, North Dakota 58763, beginning on July 21, 2022. It is alleged that MEC Distribution failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503) and its respective implementing regulations at 41 C.F.R. § 60-741.

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 MEC Distribution enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

II. General Terms and Conditions

1. In exchange for MEC Distribution's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under Section 503. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if MEC Distribution 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 MEC Distribution'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. MEC Distribution 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 it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves MEC Distribution of its obligation to fully comply with the requirements of Executive Order 11246, as amended (E.O. 11246), Section 503, the Vietnam Era Veterans Readjustment Assistance Act, as amended (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. MEC Distribution 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. MEC Distribution 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 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 MEC Distribution submits its final progress report required in Section VII, below, unless OFCCP notifies MEC Distribution in writing before the expiration date that MEC Distribution 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 MEC Distribution has met all of its obligations under the Agreement.
11. If MEC Distribution violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-741.63 (2014) will govern:
 - i. OFCCP will send MEC Distribution a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. The MEC Distribution shall have fifteen (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 MEC Distribution is unable to demonstrate that it has not violated the Agreement, or if OFCCP's 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 the MEC Distribution, 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. MEC Distribution may be subject to the sanctions set forth in, 41 C.F.R. 60-741.66 (2014) and/or other appropriate relief for violating this Agreement.
- 12. MEC Distribution neither admits nor denies any violation of the Executive Order, 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 OFCCP.
- 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. Discrimination Violation

- 1. **VIOLATION:** OFCCP found sufficient evidence to support that MEC Distribution failed to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability, in violation of 41 C.F.R. § 60-741.21(a)(6). Specifically, MEC Distribution failed to engage in an interactive process and respond to the Complainant’s requests for an accommodation, in violation of 41 C.F.R. § 60-741.5(a).

IV. Financial Remedy

- 1. **Settlement Account.** MEC Distribution agrees to the pay the Complainant, identified in Attachment A, the amount of \$394.65 to resolve the specific violation set forth above. The total settlement amount includes \$360.00 in back pay and \$34.65 in interest.
- 2. **Allocation**
 - a. **Total Amount to be Allocated.** The back pay and interest amounts will be distributed to the Complainant as explained in this Section. The amount distributed will include appropriate deductions for the Complainant’s share of payroll deductions

required by law on the portion representing back pay only, such as federal (FICA/Federal Unemployment Tax Act (FUTA)), state or local insurance premiums or taxes.

- b. **Complainant's Eligibility to Receive Payments.** The settlement will be distributed to the Complainant, if the Complainant responds timely to the Notice Process as explained below (hereinafter, Eligible Complainant).
- c. **Payment to Eligible Complainant.** MEC Distribution will issue a check or make electronic payment to the Eligible Complainant in the stated amount, along with appropriate tax reporting forms (such as W-2 and Internal Revenue Service (IRS) Form 1099) by the date set forth on the Timeline. OFCCP will receive timely documentation of the payment made and any payment returned undelivered, or any check not cashed, as set forth in Section VII below. Any check that remains uncashed 180 days after the initial date the check was mailed to the Eligible Complainant will be void.
- d. **Tax Payments, Forms and Reporting.** MEC Distribution will pay MEC Distribution's share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Amount. MEC Distribution shall mail to the Eligible Complainant an IRS Form W-2 for that portion of the payment representing back pay and an IRS Form 1099 for that portion of the payment representing interest. These IRS forms will be provided to the Eligible Complainant either at the time of payment, electronically, or with the settlement check, or at the end of the year, as required by the IRS. The Eligible Complainant will not be required to complete a W-4 or W-9 in order to receive payments under this settlement.

3. Notice Process

- a. **OFCCP and MEC Distribution Obligations under the Notice Process.** The Notice Process set forth in this Agreement is intended to provide the Complainant a meaningful opportunity to understand her rights and obligations and act on them in a timely manner. OFCCP and MEC Distribution agree not to unreasonably withhold consent to reasonable modifications proposed by either party.
- b. **Notice Documents.** MEC Distribution will distribute the Notice Documents to the Complainant identified in Attachment A consistent with the sample Notice Documents contained in Attachment C. The Notice Documents may include a Notice and Release of Claims forms. The Notice Documents may also include other materials such as standard OFCCP or U.S. Department of Labor materials, instructions or a cover sheet, or other information that better enables the Complainant to understand their rights and obligations and act on them in a timely manner. The Notice Documents will make clear the information about the settlement is being provided on behalf of the U.S. Department of Labor. The parties will meet and confer

on any reasonable modifications of the sample Notice Documents or additions to the material distributed by MEC Distribution, if proposed by either party.

- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- d. **Distribution of Mail Notice to Complainant.** MEC Distribution will provide initial notice by regular first-class mail or e-mail to the Complainant. MEC Distribution will send copies of all of the Notice Documents as defined above, including a postage-paid return envelope (if by mail), by first class mail to the best available mailing address, or email address, for the Complainant, by the date set forth in the Timeline. If the envelope from the initial mail notice is returned as undeliverable, it is expected that MEC Distribution will contact the Complainant in another manner.

Notice Deadline. The final deadline for the Complainant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement, and explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.

- e. **Technical Assistance.** The parties will timely respond to any inquiries from the Complainant using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for the Complainant to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement. MEC Distribution will provide OFCCP's contact information to the Complainant if the Complainant has questions or concerns.
- f. **Exchange of Information Regarding Complainant.** MEC Distribution and OFCCP will timely exchange information regarding the Complainant, including updated contact information and the results of any technical assistance provided.
- g. **Documentation of Payments.** By the deadline set forth in the Timeline, MEC Distribution will provide OFCCP with copies of cancelled checks or electronic documentation of the payment to the Complainant, including the amounts paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned checks.
- h. **MEC Distribution's Expenses.** MEC Distribution will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement.

V. Additional Individual Relief

1. During the course of the investigation, MEC Distribution affirmed that it reinstated the Complainant to a four-day work week and granted the Complainant's request for equipment. As part of this Agreement, MEC Distribution will provide documentation to verify these actions were completed as part of its Progress Report, as detailed in Section VII below.

VI. Modifications to Employment Practices and Other Non-Monetary Relief

1. **Revised Reasonable Accommodations Policies and Processes.** Within sixty (60) days after the Effective Date of this Agreement, MEC Distribution will retain a third-party Human Resources Consultant with experience in Section 503 and reasonable accommodations to conduct a review of its reasonable accommodations policies and processes. The Consultant will have the relevant educational background and experience to conduct such a review

The Consultant will review MEC Distribution's current reasonable accommodation process for the best practices identified below. The Consultant will identify where modifications or implementation of new policies, processes, or procedures are necessary. Within ninety (90) days of the Effective Date of this Agreement, the Consultant will submit a written proposal to MEC Distribution and OFCCP, detailing all recommended updates to MEC Distribution's reasonable accommodation process. Upon receipt of the proposal, MEC Distribution and OFCCP will negotiate in good faith any amendments thereto. Following OFCCP's acceptance of the proposal, MEC Distribution will implement the new or revised policies, processes, and/or procedures, as agreed, and provide documentation of such to OFCCP, as detailed in Section VII, part v.

- a. **Designation of responsible official.** MEC should designate an official to be responsible for the implementation of the reasonable accommodation procedures.
- b. **Description of process.** MEC Distribution's reasonable accommodation procedures should contain a description of the steps the contractor takes when processing a reasonable accommodation request, including the process by which the contractor renders a final determination on the accommodation request.
- c. **Form of Requests for Reasonable Accommodation.** MEC Distribution's reasonable accommodation procedures should specify that a request for reasonable accommodation may be oral or written and should explain that there are no required "magic words" that must be used by the requester to request an accommodation. The procedures should also state that requests for reasonable accommodation may be made by an applicant, employee, or by a third party, such as a relative, job coach, or friend, on his or her behalf.
- d. **Submission of Reasonable Accommodation Requests by Employees.** MEC Distribution's reasonable accommodation procedures should identify to whom an employee (or a third party acting on his or her behalf) must submit an

accommodation request. At a minimum, this should include any supervisor or management official in the employee's chain of command, and the official responsible for the implementation of the reasonable accommodation procedures.

- e. **Recurring Requests for a Reasonable Accommodation.** MEC's reasonable accommodation procedures should provide that in instances of a recurring need for an accommodation (e.g., a hearing impaired employee's need for a sign language interpreter for meetings) the requester will not be required to repeatedly submit or renew their request for accommodation each time the accommodation is needed.
- f. **Supporting Medical Documentation.** MEC Distribution's reasonable accommodation procedures should explain the circumstances, if any, under which the contractor may request and review medical documentation in support of a request for reasonable accommodation. The procedures should explain that any request for medical documentation may not be open ended, and must be limited to documentation of the individual's disability and the functional limitations for which reasonable accommodation is sought. The procedures should also explain that the submission of medical documentation is not required when the disability for which a reasonable accommodation is sought is known or readily observable and the need for accommodation is known or obvious.
- g. **Written Confirmation of Receipt of Request.** MEC Distribution's reasonable accommodation procedures should specify that written confirmation of the receipt of a request for reasonable accommodation will be provided to the requester, either by letter or email. The written confirmation should include the date the accommodation request was received, and be signed by the authorized decisionmaker or his or her designee.
- h. **Timeframe for Processing Requests.** MEC Distribution's reasonable accommodation procedures should state that requests for accommodation will be processed as expeditiously as possible.
- i. **Reasonable Accommodation Requests by Applicants.** MEC Distribution's reasonable accommodation procedures should include procedures to ensure that all applicants, including those using the contractor's online or other electronic application system, are made aware of the contractor's reasonable accommodation obligation and are invited to request any reasonable accommodation needed to participate fully in the application process. All applicants should also be provided with contact information for contractor staff able to assist the applicant, or his or her representative, in making a request for accommodation. MEC Distribution's procedures should provide that reasonable accommodation requests by or on behalf of an applicant are processed expeditiously, using timeframes tailored to the application process.

- j. **Denial of Reasonable Accommodation.** MEC Distribution's reasonable accommodation procedures should specify that any denial or refusal to provide a requested reasonable accommodation will be provided in writing. The written denial should include the reason for the denial and be dated and signed by the authorized decisionmaker or his or her designee. If the contractor provides an internal appeal or reconsideration process, the written denial should inform the requester about this process.
 - k. **Confidentiality.** MEC Distribution's reasonable accommodation procedures should indicate that all requests for reasonable accommodation, related documentation (such as request confirmation receipts, requests for additional information, and decisions regarding accommodation requests), and any medical or disability-related information provided to the contractor will be treated as confidential medical records and maintained in a separate medical file, in accordance with Section 503.
 - l. **Dissemination of Procedures to Employees.** MEC Distribution should disseminate its written reasonable accommodation procedures to all employees. The notice of the reasonable accommodation procedures may be provided by including it in an employee handbook that is disseminated to all employees and/or by email or electronic posting on MEC Distribution's intranet or other webpage where work-related notices are ordinarily posted.
 - m. **Training.** MEC Distribution should provide annual training for its supervisors and managers regarding the implementation of the reasonable accommodation procedures. Training should also be provided whenever significant changes are made to the reasonable accommodation procedures. Training regarding the reasonable accommodation procedures may be provided in conjunction with other required equal employment opportunity or affirmative action training.
- 2. **Equal Employment Opportunity Policy.** The Consultant will ensure MEC Distribution's Equal Employment Opportunity policy includes a statement that it will not intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities: (1) Filing a complaint; (2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities; (3) Opposing any act or practice made unlawful by Section 503 of the Rehabilitation Act or any other federal, state, or local law requiring equal opportunity for individuals with disabilities; or (4) Exercising any other right protected by Section 503 of the Rehabilitation Act, as amended.
 - 3. **Training on Policies and Processes.** The Consultant will provide training to MEC Distribution's supervisory and management employees corporate-wide, including all employees involved in making reasonable accommodation decisions, on the reasonable accommodation and equal employment opportunity requirements of Section 503 and its

implementing regulations. The Consultant will also train supervisory and management employees on MEC Distribution's reasonable accommodation policies, processes, and procedures and processes, including any modifications made in accordance with paragraph 1a of this section. The training will take place within 150 days of the execution date of this Agreement.

- a. **EEO is the Law.** The Consultant will ensure that MEC Distribution posts notice of their EEO and affirmative action obligations in conspicuous places, available and accessible to both employees and applicants for employment whether by physical or electronic posting. "EEO is the Law" posters (and required supplements) should be in break rooms, common areas for employees and areas frequented by applicants for employment.
- b. **Recordkeeping and Retention.** The Consultant will ensure that all records relating to requests for reasonable accommodation, including their resolution, are documented and that documents are retained in accordance with 41 C.F.R. § 60-741.80.

VII. OFCCP Monitoring Period

1. **Recordkeeping.** MEC Distribution 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. MEC Distribution will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
 - a. **Schedule and Instructions.** MEC Distribution agrees to furnish OFCCP with a progress report due on June 30, 2023. MEC Distribution will submit the report to: Marlene Williams, Acting District Director, (b) (6), (b) (7)(C) @dol.gov, and will include the following
 - i. A copy of the Notice to Complainant sent to the Complainant identified in Attachment A.
 - ii. A copy of the Claim Form and Release of Claims under Section 503 returned by the Complainant identified in Attachment A.
 - iii. Documentation of the Settlement Amount paid to Complainant. The documentation must include a copy of the cancelled check or electronic documentation of payment made to the Complainant, including the amount paid, the date payment was sent, the date payment was received or the check cashed, and any uncashed or returned check.

- iv. Documentation of the resolution to the Complainant's reasonable accommodation request for a schedule modification and equipment.
- v. Documentation of all modifications of personnel practices made pursuant to the Agreement and documentation of its compliance with the remedy provisions of this Agreement. If any of the relevant documents, such as policies, have not been modified during the reporting period, a statement to that effect is sufficient.
- vi. Copies of reasonable accommodation policies, and documentation of any accommodation requests received and their resolution, if any.
- vii. Photographs and screenshots to demonstrate that MEC Distribution posted notice of their EEO and affirmative action obligations in conspicuous places, available and accessible to both employees and applicants for employment whether by physical or electronic posting.
- viii. Documentation of the training provided to MEC Distribution's supervisory and management employees on the equal employment opportunity requirements of Section 503 and its implementing regulations, including but not necessarily limited to: date(s) of training, course name, description and content of the training program, training log, attendees' names and job titles, and copies of sign-in sheets.

MEC Distribution 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 MEC Distribution provides in accordance with this agreement are customarily kept private or closely-held, and the MEC Distribution believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, MEC Distribution 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 MEC Distribution's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify MEC Distribution in writing within sixty (60) days of the date of the final progress report that MEC Distribution 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 MEC Distribution within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines MEC Distribution has met all of its obligations under the Agreement.

VIII. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and MEC Distribution, LLC, 3949 Hwy 8, Suite 109 New Town, ND 58763.

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

Patrick O'Berry
CEO
MEC Distribution LLC

DATE: 12/08/2022

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

Marlene Williams
Acting District Director
OFCCP, Arlington District Office

DATE: 12/09/2022

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

Compliance Officer
OFCCP, Arlington District Office

DATE: 12/09/2022