

**Conciliation Agreement
Between the
U.S. Department of Labor
Office of Federal Contract Compliance Programs
and
Delmar Gardens Smyrna, LLC
404 King Springs Parkway
Smyrna, Georgia 30080**

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the Delmar Gardens Smyrna, LLC (Delmar Gardens) 404 King Springs Parkway, Smyrna, Georgia, beginning on November 9, 2022. OFCCP found that Delmar Gardens failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503), and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 CFR Sections § 60-1, 60-2, 60-3, 60-300 and 60-741.

OFCCP notified Delmar Gardens of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on December 9, 2022.

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

II. General Terms and Conditions

1. In exchange for Delmar Garden's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Delmar Gardens violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Delmar Garden'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. Delmar Gardens 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 Delmar Gardens of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing

regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

4. Delmar Gardens 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. Delmar Gardens 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 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 Delmar Gardens submits its final progress report required in Section IV, below, unless OFCCP notifies Delmar Gardens in writing before the expiration date that Delmar Gardens 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 Delmar Gardens has met all of its obligations under the Agreement.
11. If Delmar Gardens violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34, C.F.R. 60-300.63 and 41 C.F.R. 60-741.63 will govern:
 - i. OFCCP will send Delmar Gardens a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. The Delmar Garden 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 Delmar Gardens 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 the Delmar Gardens, 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 in the Agreement.
- b. Delmar Gardens may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, C.F.R. 60-741.66, 60-300.66, and/or other appropriate relief for violating this Agreement.
- 12. Delmar Gardens does not admit 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 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 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

The following violations and remedies apply to the Reviewed Establishment, as defined in Part I.

1. **Violation 1:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to maintain its current AAP and documentation of its good faith efforts, as required by 41 CFR 60- 1.12(b).

Remedy 1: Delmar Gardens will maintain its current AAP and documentation of its good faith efforts, as required by 41 CFR 60-1.12(b), and must provide OFCCP with the requested AAP documentation noted in Part IV.

2. **Violation 2:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to include the internal audit and reporting systems component specified in 41 CFR 60-2.17(d), as required by 41 CFR 60-2.10(b)(2)(iv).

Remedy 2: Delmar Gardens will include in its AAP the internal audit and reporting systems component specified 41 CFR 60-2.17(d), as required by 41 CFR 60-2.10(b)(2)(iv).

3. **Violation 3:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to prepare and maintain an affirmative action program (AAP) for protected veterans at each establishment, in violation of 41 CFR 60-300.40(b). Accordingly, Delmar Gardens failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60-300.40-45.

Remedy 3: Delmar Gardens will prepare and maintain an affirmative action program (AAP) for protected veterans at each establishment. The AAP shall set forth Delmar Gardens' s policies and procedures in accordance with 41 CFR 300.40-45. This AAP may be integrated into or kept separate from other AAPs. Delmar Gardens shall review and update annually its AAP pursuant to 41 CFR 60-300.40(c) and must comply with all obligations set forth in Subpart C of the regulations, 41 CFR 60- 300.40-45.

4. **Violation 4:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit protected veterans, in violation of 41 CFR 60-300.44(f)(1)(i).

Remedy 4: Delmar Gardens will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans, such as those described at 41 CFR 60-300.44(t)(2).

5. **Violation 5:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified protected veterans, as required by 41 CFR 60-300.44(f)(3).

Remedy 5: At least annually, Delmar Gardens will review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f)(3). If Delmar Gardens concludes that the totality of its efforts were

not effective in identifying and recruiting qualified protected veterans, it shall identify and implement alternative efforts listed in 41 CFR 60-300.44(f)(1) or (f)(2).

6. **Violation 6:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to prepare and maintain an affirmative action program (AAP) for qualified individuals with disabilities at each establishment, in violation of 41 CFR 60-741.40(b). Accordingly, Delmar Gardens failed to comply with any of its AAP obligations set forth in Subpart C of the regulations, 41 CFR 60-741.40-45.

Remedy 6: Delmar Gardens will prepare and maintain an affirmative action program (AAP) for qualified individuals with disabilities at each establishment. The AAP shall set forth Delmar Garden's policies and procedures in accordance with 41 CFR 741.40-45. This AAP may be integrated into or kept separate from other AAPs. Delmar Gardens shall review and update annually its AAP pursuant to 41 CFR 60-741.40(c) and must comply with all obligations set forth in Subpart C of the regulations, 41 CFR 60-741.40-45.

7. **Violation 7:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, in violation of 41 CFR 60-741.44(t)(1)(i).

Remedy 7: Delmar Gardens will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2).

8. **Violation 8:** During the period of September 23, 2019, through September 22, 2020, Delmar Gardens failed to annually review the effectiveness of the outreach and recruitment efforts it took over the previous twelve months to identify and recruit qualified individuals with disabilities as required by 41 CFR 60-741.44(t)(3).

Remedy 8: At least annually, Delmar Gardens will review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). If Delmar Gardens concludes that the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in 41 CFR 60-741.44(f)(1) or (f)(2).

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Delmar Gardens agrees to retain all records relevant to the violation(s) 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. Delmar Gardens will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. Delmar Gardens Reports.

Delmar Gardens agrees to furnish OFCCP with the following reports during the Monitoring Period. Each report will contain the documentation specified according to the dates scheduled:

- a. Progress Report 1: Due on November 30, 2023 covering the period of September 23, 2022 through September 22, 2023.
- b. Progress Report 2: Due on November 30, 2024 covering the period of September 23, 2023 through September 22, 2024.

Both reports will include:

1) Pursuant to violations 1 and 2 under Executive Order 11246:

- a. An Executive Order Affirmative Action Plan (AAP) and documentation of good faith efforts in accordance with the requirements of 41 CFR 60-1.12(b) and 60-2.1-17; In addition to the written AAP, the report will include information on your affirmative action goals for the entire period covered by the report as follows:
 - i. Job group representation at the start of the AAP year (i.e., total incumbents, total minority incumbents, and total female incumbents);
 - ii. The percentage placement rates (percent goals) established for minorities and women at the start of the AAP year; and
 - iii. The actual number of placements (hires plus promotions) made during the AAP year into each job group with goals (i.e., total placements, total minority placements, and total female placements). For goals not attained, describe the specific good faith efforts made to remove identified barriers, expand equal employment opportunity, and produce measurable results.
- b. Reports demonstrating the monitoring of records of all personnel activity pursuant to the Internal Audit and Reporting Systems requirement of 41 CFR 60-2.17(d), including referrals, placements, transfers, promotions, terminations, and compensation. Specifically, data on your employment activity (applicants, hires, promotions, terminations, and compensation) for the immediately preceding AAP year. You should present this data by job group (as defined in your AAP) or by job title.

- i. Applicants: For each job group or job title, this analysis must consist of the total number of applicants identified by gender and by race/ethnicity. For each job group or job title, applicants for whom race and/or gender is not known should be included in the data submitted. However, if some of your job groups or job titles (most commonly, entry-level) are filled from the same applicant pool, you may consolidate your applicant data for those job groups or titles. For example, where applicants expressly apply for or would qualify for a broad spectrum of jobs (such as "Production," "Office," etc.) that includes several job groups, you may consolidate applicant data.
- ii. Hires: For each job group or job title, this analysis must consist of the total number of hires identified by gender and race/ethnicity.
- iii. Promotions: For each job group or job title, provide the total number of promotions by gender and race/ethnicity. Also, include a definition of "promotion" as used by your company and the basis on which they were compiled (e.g., promotions to the job group, from and/or within the job group, etc.). If it varies for different segments of your workforce, please define the term as used for each segment. If you present promotions by job title, include the department and job group from which and to which the person(s) was promoted.
- iv. Terminations: For each job group or job title, provide the total number of employee terminations by gender and race/ethnicity. When presenting terminations by job title, include the department and job group from which the person(s) terminated.
- v. Employee level compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, and temporary employees) as of the date of the organizational display or workforce analysis. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EE0-1 Category, and job group in a single file. Provide all requested data electronically, if maintained in an electronic format.
 1. For all employees, compensation includes base salary and or wage rate, and hours worked in a typical workweek. Other compensation or adjustments to salary such as bonuses, incentives, commissions, merit increases, locality pay, or overtime should be identified separately for each employee.
 2. You may provide any additional data on factors used to determine employee compensation, such as education, past experience, duty location, performance ratings, department or function, and salary level/band/range/grade.

3. Documentation and policies related to compensation practices of the contractor should also be included in the submission, particularly those that explain the factors and reasoning used to determine compensation.
- 2) Pursuant to Violations 3, 4, and 5 under VEVRAA:
 - a. Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212), as amended, AAP prepared according to the requirements of 41 CFR 60-300.40(b).
 - b. Evidence that Delmar Gardens has undertaken appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans² in accordance with 41 CFR 60-300.44(t)(2).
 - c. Written annual review all outreach and recruitment activities for protected veterans in accordance with 41 CFR 60-300.44(t)(3).
 - 3) Pursuant to Violation 6, 7, and 8 under Section 503:
 - a. A Section 503 of the Rehabilitation Act of 1973, as amended, AAP prepared according to the requirements of 41 CFR 60-741.40(b);
 - b. Evidence that Delmar Gardens has undertaken appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities³ in accordance with 41 CFR 60-741.44(f)(2).
 - c. Written annual review all outreach and recruitment activities for qualified individuals with disabilities in accordance with 41 CFR 60-741.44(f)(3).

Delmar Gardens will submit reports to District Director Sybil Shy-Demmons at 61 Forsyth Street SW, Suite 17T50, Atlanta, Georgia 30303 or to email address at **(b) (6), (b) (7)(C)**@dol.gov.

Delmar Gardens 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 Delmar Gardens provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely held, and the Delmar Gardens believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Delmar Gardens will provide such reports to OFCCP marked as "Confidential." In the event of a FOIA request, OFCCP will promptly notify Delmar Gardens of the FOIA request and provide Delmar Gardens an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

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 Delmar Garden's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Delmar Gardens in writing within sixty (60) days of the date of the final progress report that Delmar Gardens has not fulfilled all 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 Delmar Gardens within the allotted time that it has not fulfilled all its obligations, this Agreement is automatically extended until the date that OFCCP determines Delmar Gardens has met all of its obligations under the Agreement.

Delmar Gardens of Smyrna, LLC
Conciliation Agreement
OFCCP No. R00300622

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Delmar Gardens Smyrna, LLC, 404 King Springs Parkway, Smyrna, Georgia 30080.

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

Gabe Grossberg
President & Chief Executive Officer
Delmar Gardens of Smyrna, LLC
14805 N. Outer 40 Rd-Suite 300
Chesterfield, MO 63017-6060

DATE: 1/9/2023

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

Sybil Shy-Demmons
District Director
Atlanta District Office
Southeast Region

DATE: 01/18/2023

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

Compliance Officer
Atlanta District Office
Southeast Region

DATE: 01/18/2023