

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
Herve Cody Contractor LLC

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the compliance of Herve Cody Contractor LLC (“Contractor”), beginning on September 8, 2022 with its equal employment opportunity obligations on all of its federal, federally assisted, and non-federal construction projects located in the Miami - Fort Lauderdale, FL Non-Standard Metropolitan Statistical Area (Non-SMSA) which is comprised of the following counties: Glades, Hendry, Indian River, Martin, Monroe, Okeechobee, and St. Lucie, FL. OFCCP found that Contractor failed to comply with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 Code of Federal Regulations (CFR) Chapter 60.

OFCCP notified Contractor of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on March 17, 2023.

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 Contractor 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 Contractor’s fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246 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 Contractor 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 Contractor’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. Contractor 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 Contractor 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. Contractor 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.
 5. The parties understand the terms of this Agreement and enter into it voluntarily.
 6. 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.
 7. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
 8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
 9. This Agreement will expire sixty (60) days after Contractor submits its final progress report required in Section IV, below, unless OFCCP notifies Contractor in writing before the expiration date that Contractor 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 Contractor has met all of its obligations under the Agreement.
 10. If Contractor 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 Contractor a written notice stating the alleged violation(s) and summarizing any supporting evidence.
 - ii. The Contractor 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 Contractor 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 Contractor, 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. Contractor may be subject to the sanctions set forth in: Section 209 of the Executive Order, 41 C.F.R. 60-1.27 or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
- 11. Contractor 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.
- 12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- 13. 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.
- 14. Each party shall bear its own fees and expenses with respect to this matter.
- 15. 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.
- 16. 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

- 1. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor failed to disseminate its EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed, as required by 41 CFR 60-4.3(a)7.f.

REMEDY: Contractor will disseminate its EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual

report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed, as required by 41 CFR 60-4.3(a)7.f.

2. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor failed to review, at least annually, its EEO policy and affirmative action obligations under the Standard Federal Equal Employment Construction Specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site; and make and maintain a written record identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter, as required by 41 CFR 60-4.3(a) 7.g.

REMEDY: Contractor will review, at least annually, its EEO policy and affirmative action obligations under the Standard Federal Equal Employment Construction Specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter, as required by 41 CFR 60-4.3(a)7.g.

3. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor 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 Contractor [or its union] had employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a)7.b.

REMEDY: Contractor will 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 Contractor [or its union] has employment opportunities available, and maintain a record of the organizations' responses, as required by 41 CFR 60-4.3(a)7.b.

4. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor failed to maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual, as required by 41 CFR 60-4.3(a)7.c.

REMEDY: Contractor will maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority

or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual is sent to the union hiring hall for referral and is not referred back to Contractor by the union or, if referred, not employed by Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions Contractor may have taken, as required by 41 CFR 60-4.3(a)7.c.

5. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e). Specifically, Contractor failed to keep applicant, testing, interview, hiring or other personnel or employment records for unsuccessful applicants.

REMEDY: Contractor will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), and will keep and preserve those records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurs later. However, if Contractor has a total workforce of 150 or fewer employees or does not have a government contract of at least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60-1.12(a). Contractor will identify (i) The gender, race, and ethnicity of each employee; and (ii) where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, whichever is applicable to the particular position. Contractor will supply this information to the Office of Federal Contract Compliance Programs upon request.

6. **VIOLATION:** During the period of September 8, 2021 through September 8, 2022, Contractor failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 CFR 60-300.5(a)2-6.

REMEDY: Contractor will list all employment openings 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 Contractor, as required by 41 CFR 60-300.5(a)2-6.

Contractor will list all employment openings which exist at the time of the execution of its federal contracts and those which occur during the performance of such contracts, including those not generated by such contracts and including those occurring at a location other than the one where such contracts are performed. Contractor will list with the ESDS at least concurrently with the use of any other recruitment source or effort.

With its initial listing, and as subsequently needed to update the information, Contractor will also advise the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all

locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Contractor will provide updated information simultaneously with its next job listing.

IV. OFCCP Monitoring Period

1. **Recordkeeping.** Contractor agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. Specifically, the contractor must retain all employment records. 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. Contractor will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
 - a. Contractor agrees to furnish OFCCP with the following reports during the Monitoring Period.

Progress Report 1: Due on Monday, October 2, 2023 covering the period March 1, 2023 through August 31, 2023.

Progress Report 1: Due on Monday, April 1, 2024 covering the period September 1, 2023 through February 29, 2024.
 - b. With regard to Contractor's construction projects as described in Part I of this Agreement, each report will contain the following documentation:
 - i. Documentation that the contractor's EEO policy was specifically reviewed with all management personnel and with all minority and female trade employees.
 - ii. Documentation that the contractor's EEO policies and affirmative action obligations were reviewed with all of its employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions regarding trade employees, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to initiation of construction work at any job site during the period covered by the progress report. This documentation should include a written record identifying the time and place of these meetings, names of persons attending, subject matter discussed, and disposition of the subject matter.
 - iii. A copy of the contractor's list of minority and female recruitment sources to include copies of all written notification to these sources regarding all

available employment opportunities. In addition, provide copies of all records of responses received from recruitment sources and community organizations.

- iv. A copy of the contractor's file of names, addresses, telephone numbers, race, and gender of each applicant and person making an inquiry regarding a job in the landscaping trade, and the disposition of each. The file should include persons submitting applications and resumes submitted electronically or walk-in, referrals from recruitment sources or community organization, and an indication of what action was taken with respect to each such individual.
- v. A log of all applicants identified by name, race/ethnicity, gender, date applied, trade applied for, referral source, date of hire or reason for non-selection. Applicants for whom race and/or gender is not known will be included in the log and identified as having unknown race and/or gender.
- vi. Documentation of all job openings for the reporting period as well as documentation showing Contractor listed all employment openings as they occurred with an appropriate employment service delivery system (ESDS) where the openings occur. The listings will be in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to the contractor. Documentation that Contractor has advised the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state. Documentation that Contractor has provided the ESDS with the name and address of each of its hiring locations within the state and the contact information for the official responsible for hiring at each location.

Contractor will submit reports to the U.S. Department of Labor, OFCCP, Miami District Office, District Director Michelle Hernandez at **(b) (6), (b) (7)(C)**@dol.gov. Contractor 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 Contractor provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the Contractor believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Contractor will provide such reports to OFCCP marked as “Confidential”. In the event of a FOIA request, OFCCP will promptly notify Contractor of the FOIA request and provide Contractor 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 Contractor’s final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Contractor in writing within sixty (60) days of the date of the final progress report that Contractor 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 Contractor within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Contractor has met all of its obligations under the Agreement.

V. SIGNATURES

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

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Herve Cody Contractor LLC located at 15 N Main Street, Robbinsville, NC 28771.

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

Dirk Cody
Herve Cody Contractor LLC
Owner

DATE: 03/22/2023

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

E. Michelle Hernandez
District Director
Southeast Region

DATE: 03-22-2023