

## CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

CAPCO, LLC

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") has conducted a complaint investigation of (b) (6), (b) (7)(C) ("Complainant") against Capco, Inc., located at 1328 Winters Ave., Grand Junction, Colorado, and found that Capco, Inc. was not in compliance with the Executive Order 11246, as amended ("E.O. 11246") and its implementing regulations at 41 C.F.R. Part 60-1. OFCCP notified Capco, Inc. of the specific violations found and the corrective actions required in a Notice of Report of Investigation issued on May 2, 2017. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Capco, LLC ("Capco") as successor in interest to Capco, Inc., enter into this Conciliation Agreement ("Agreement") and agree to all the terms stated below.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Capco's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violation described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violation described in Part III if Capco violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Capco agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Capco will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.

3. Capco understands that nothing in this Agreement relieves Capco 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 the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (“VEVRAA”), their implementing regulations, and other applicable equal employment laws.
4. Capco promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Denver District Director (the “Effective Date”).
9. This Agreement will expire sixty (60) days after Capco submits the final report required in Part IV (D), below, unless OFCCP notifies Capco in writing prior to the expiration date that Capco has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Capco has met all of its obligations under the Agreement.
10. If Capco violates this Conciliation Agreement,
  - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
    - 1) If OFCCP believes that Capco violated any term of the Agreement while it was in effect, OFCCP will send Capco a written notice stating the alleged violations and summarizing any supporting evidence.
    - 2) Capco will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

3) If Capco is unable to demonstrate that it has not violated the Agreement, or if OFCCP demonstrates irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.

4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

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

11. This Agreement does not constitute an admission by Capco of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Capco violated any laws.

### **PART III. SPECIFIC VIOLATIONS AND REMEDIES**

**VIOLATION:** OFCCP alleges that Capco failed to ensure that it did not retaliate against or otherwise discriminate against any individual who participated in an OFCCP investigation or compliance evaluation, in violation of 41 C.F.R. § 60-1.32. Capco expressly denies OFCCP's allegation. Specifically, OFCCP determined that the Complainant was employed at Capco as a fulltime Operator from (b) (6), (b) (7)(C) 2013 through (b) (6), (b) (7)(C) 2014. The Complainant engaged in a protected activity when (b) (6), (b) (7)(C) participated in an OFCCP interview during a compliance evaluation on May 22, 2014. The Complainant was subjected to an adverse employment action when (b) (6), (b) (7)(C) was laid off on August 13, 2014, as one of the employees affected by a reduction in force. OFCCP found that Capco violated the requirements of E.O. 11246 and its regulations at 41 C.F.R. § 60-1.32.

**REMEDY:** Capco agrees to immediately cease using the practices and/or policies that negatively affected the Complainant and will take the following corrective actions:

- A. **Notice:** Within 10 calendar days of the Effective Date of this Agreement, Capco will provide the Complainant, by mailing via certified mail, full disclosure of the terms of the Agreement (Attachment 1, Notice) and the Release of Claims Under E. O. 11246 (Attachment 2, Release). The Notice and Release will be provided by certified mail, return receipt requested and a postage paid return envelope.
- B. **Eligibility:** The Complainant must return the Release to Capco within 35 calendar days of the Effective Date of this Agreement to be entitled to receive the monetary settlement.
- C. **Monetary Settlement:** Within 50 calendar days of the Effective Date of this Agreement, Capco shall provide the Complainant, by mailing via certified mail, a make whole remedy in the amount of \$15,000.00 that includes \$12,750 in back

wages (less federal, state, and/or local taxes and the Complainant's share of FICA taxes or other deductions required by law) and \$2,250 in interest. The back wages will be reported on an IRS Form W-2 and the interest will be reported on an IRS Form 1099. No disbursements of the monetary settlement covered by this Agreement are to be made prior to the 45 calendar days following the Effective Date of this Agreement.

**Part IV. REPORTS REQUIRED**

Capco will submit the documents and report(s) described below to OFCCP, and shall send each report described below to:

Denver District Director  
U.S. Department of Labor/OFCCP  
Cesar E. Chavez Memorial Building  
1244 Speer Blvd., Suite 540  
Denver, CO 80204

1. Within 90 calendar days of the Effective Date of this Agreement, Capco will submit documentation of the Monetary Settlement paid to the Complainant by submitting a copy of the cancelled checks, or other financial institution verification. The company will also submit to OFCCP a signed copy of the Release of Claims.
2. Capco will retain all records and data pertinent to the violation resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later. Such documents and information may include checks or letters returned as undeliverable.

**Part V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and Capco, LLC, located at 1328 Winters Ave., Grand Junction, Colorado.

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

RICHARD W. LANGLEY  
Chief Financial Officer  
Capco, LLC

Date: 9/7/18

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

NICOLE A. HUGGINS  
Denver District Director  
OFCCP

Date: 09/10/2018

ATTACHMENT I

NOTICE TO COMPLAINANT

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

Capco, LLC ("Capco") and the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") have entered into a Conciliation Agreement ("Agreement") to resolve the alleged violation of Executive Order 11246, as amended, and its implementing regulations, and to resolve the matter without further legal proceedings.

As part of the Agreement, you are eligible to receive a monetary distribution of \$15,000 (\$12,750 in back pay and \$2,250 in interest). The amount of back pay will be reduced by deductions required by law, such as federal, state and/or local taxes and your share of FICA taxes.

Under the terms of the Agreement, it will take up to 50 days before you receive your monetary distribution. In order to be eligible for the distribution, you must complete, sign and return the enclosed Release of Claims under Executive Order 11246 by [INSERT SAME DATE AS RELEASE] to the following address:

Name of Capco Representative  
Title of Capco Representative  
1328 Winters Ave.  
Grand Junction, CO 81501  
Email

Enclosed please find a postage paid return envelope that you may use to return the completed and signed Release. If you do not complete and return the Release by [INSERT SAME DATE AS RELEASE], you will no longer be entitled to any relief.

By entering into this Agreement, Capco has not admitted nor has there been any adjudicated finding that Capco violated any laws. Capco has entered into this Agreement to resolve the matter without further proceedings. Capco has denied any wrongdoing.

Sincerely,

Capco Representative  
Title of Capco Representative

Enclosure: Release of Claims

**ATTACHMENT 2  
RELEASE OF CLAIMS**

**RELEASE OF CLAIMS UNDER Executive Order 11246**

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**PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT.**

This Release of Claims under Executive Order 11246, as amended, and its implementing regulations (Release) is a legal document. This document states that in return for Capco, LLC ("Capco") providing you with money, you agree that you will not file any lawsuit or any other type of action against Capco for allegedly violating Executive Order 11246, as amended, and its implementing regulations, in connection with your layoff as a CNC Operator. It also says that Capco does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of the payment of \$15,000.00 (less deductions required by law) to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Capco, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my layoff on August 13, 2014.

II.

I understand that Capco denies that it treated me unlawfully or unfairly in any way and that Capco entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve without further legal proceedings all issues related to OFCCP's complaint investigation of (b) (6), (b) (7)(C) v. Capco, Inc. conducted on February 18, 2015. I further agree that the payment by Capco to me is not to be construed as an admission of any liability by Capco.

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to Capco Representative, Capco, LLC or OFCCP Compliance Officer (b) (6), (b) (7)(C) such that it is received by [INSERT DATE], I will not be entitled to receive \$15,000.00 (less deductions required by law).

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_