

Conciliation Agreement

Between the

**U.S. Department of Labor
Office of Federal Contract Compliance Programs**

And

**Delmar Gardens of Omaha LLC
2305 South 10th Street
Omaha, NE 68108-1108**

**Delmar Gardens of Gwinnett
3100 Club Drive
Lawrenceville, GA 30044-2591**

Part I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (OFCCP) evaluated two facilities for Delmar Gardens Enterprises, Inc. (Delmar Gardens) as follows: Delmar Gardens of Omaha LLC establishment, located at 2305 S 10th Street, Omaha, Nebraska, and Delmar Gardens of Gwinnett establishment located at 3100 Club Drive, Lawrenceville, Georgia (hereinafter "Reviewed Establishments"). The review of Delmar – Omaha began on January 30, 2020, and the review for Delmar – Gwinnett began on March 16, 2020. 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(s) 60-1, 60-2, 60-3, 60-300 and 60-741.

OFCCP notified Delmar Gardens of the specific violations and the corrective actions required for both facilities in a Notice of Violation (NOV) issued on May 21, 2020.

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 Delmar Gardens enter into this Conciliation Agreement (Agreement), and the parties agree to all the terms therein.

Part 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 VEVRAA based on the violations alleged in Part III. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Delmar Gardens violates any provision of this Agreement. 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 it 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, 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.
8. This Agreement becomes effective on the day it is signed by the Regional 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 Part 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, 41 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 Gardens 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 Delmar Gardens 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 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 agreed to 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, 41 C.F.R. 60-741.66, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
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.

Part III. SPECIFIC VIOLATIONS AND REMEDIES

The following violations and remedies apply to the Reviewed Establishments, as defined in Part I. The review period for the Omaha location is 8/1/2018 to 1/30/2020 and the review period for the Gwinnett location is 9/23/2018 to 3/16/2020 (hereinafter "Review Periods").

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

2. **VIOLATION:** During the Review Periods, 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: Delmar Gardens will include in its AAP 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).

3. **VIOLATION:** During the Review Periods, 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: 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:** During the Review Periods, 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: 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(f)(2).

5. **VIOLATION:** During the Review Periods, 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: 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:** During the Review Periods, 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: 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:** During the Review Periods, 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(f)(1)(i).

REMEDY: 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:** During the Review Periods, 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(f)(3).

REMEDY: 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).

Part IV. REPORTS REQUIRED

Delmar Gardens must submit the documents and reports described below to the following OFCCP representatives:

For the Delmar Gardens of Omaha establishment

(b) (7)(C), (b) (7)(E)

OFCCP Omaha Area Office
(b) (6), (b) (7)(C)@dol.gov

For the Delmar Gardens of Gwinnett establishment

(b) (7)(C), (b) (7)(E)

OFCCP Atlanta District Office
(b) (6), (b) (7)(C)@dol.gov

For each of the establishments under review, Delmar Gardens will submit two progress reports covering two distinct 12-month periods, consistent with each establishment's AAP plan year, as follows:

Delmar Gardens of Omaha establishment

1. First report will cover August 1, 2020 – July 31, 2021
2. Second report will cover August 1, 2021 – July 31, 2022

Delmar Gardens of Gwinnett establishment

1. First report will cover September 23, 2020 – August 22, 2021
2. Second report will cover September 23, 2021 – August 22, 2022

The progress reports shall be due thirty (30) days after the close of each reporting period and 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 efforts¹ 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

¹ Included as Attachment A to this Agreement is a list of outreach sources for Delmar Garden's consideration pursuant to good faith efforts for this part.

organizational display or workforce analysis. Provide gender and race/ethnicity information and hire date for each employee as well as job title, EEO-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(f)(2).**
- c. Written annual review all outreach and recruitment activities for protected veterans in accordance with 41 CFR 60-300.44(f)(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**

2 Included as Attachment A to this Agreement is a list of outreach sources for Delmar Garden's consideration pursuant to outreach and positive recruitment for this part.

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 retain all records and data pertinent to the violations 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 time period is longer.

Part 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.

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

Gabe Grossberg
President and CEO
Delmar Gardens Enterprises, INC.
14805 N. Outer 40 Road, Suite 300
Chesterfield, MO 63017-2026

Date: 6/12/2020

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

Carmen Navarro
Regional Director
OFCCP, Midwest Region

Date: 6/19/2020

³ Included as Attachment A to this Agreement is a list of outreach sources for Delmar Garden's consideration.

**Attachment A:
List of Potential Outreach Sources**

The following outreach sources are included with the agreement to aid Delmar Gardens with identifying potential outreach sources for meeting applicable goals and benchmarks. These sources were generated based on current agency priorities and best practices and may be used concurrently with other sources identified by Delmar Gardens.

	Delmar Gardens of Omaha LLC	Delmar Gardens of Gwinnett
All Programs	<p>EmployOMA Coalition Omaha, Nebraska Contact: employoma@gmail.com</p> <p>University of Nebraska Omaha 6001 Dodge Street Omaha, Nebraska Contact: unoacdc@unomaha.edu</p>	<p>Goodwill of North Georgia 235 Peachtree Street, NE North Tower, Suite 2300 Atlanta, Georgia 30303 Contact: Shauna de Preez (b) (6), (b) (7)(C)@ging.org</p>
Protected Veterans	<p>US Veterans Administration 825 Dorcas Omaha, Nebraska Contact: (b) (6), (b) (7)(C)@va.gov</p>	<p>Hire Heroes USA 1360 Union Hill Road Alpharetta, Georgia 30004 Contact: Elizabeth Reyes (b) (6), (b) (7)(C)@hireheroesusa.org</p>
Qualified Individuals with Disabilities	<p>Nebraska Vocational Rehabilitation 5752 Ames Avenue Omaha, Nebraska Contact: (b) (6), (b) (7)(C)@nebraska.gov</p>	<p>Briggs and Associates 2300 Holcomb Bridge Road, Suite 103 Roswell, Georgia 30077 Contact: Julie Lawson (b) (6), (b) (7)(C)@briggsassociates.org</p>