

CONCILIATION AGREEMENT

Between

THE U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

POLYNESIAN ADVENTURE TOURS
2880 KILIHOU STREET
HONOLULU, HAWAII 96819-2071

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) Polynesian Adventure Tours, located at 2880 Kilihou Street, Honolulu, Hawaii 96819 and found that Polynesian Adventure Tours was not in compliance with Executive Order 11246, as amended (“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”), and their implementing regulations at [41 C.F.R. Section(s) 60-1, 60-2, 60-3, 60-4, 60-300, and/or 60-741]. OFCCP notified Polynesian Adventure Tours of the specific violations found and the corrective actions required in a Notice of Violation issued on June 4, 2020. 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 Polynesian Adventure Tours enter this contract (“Conciliation Agreement” or “Agreement”) and agree to all the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for Polynesian Adventure Tours’ 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, Section 503, and VEVRAA based on the violations 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 violations described in Part III if Polynesian Adventure Tours violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Polynesian Adventure Tours 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. Polynesian Adventure Tours will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Polynesian Adventure Tours understands that nothing in this Agreement relieves Polynesian Adventure Tours of its obligation to fully comply with the requirements of E.O. 11246, Section 503, and VEVRAA, their implementing regulations, and other applicable equal employment laws.

Conciliation Agreement
Polynesian Adventure Tours

4. Polynesian Adventure Tours 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 CFR 60-1.32(a).
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 date it is signed by the District Director (the "Effective Date") unless the Regional Director or Director of OFCCP indicates otherwise within 45 calendar days of the date the District Director signs the Agreement.
9. This Agreement will expire sixty (60) days after Polynesian Adventure Tours submits the final progress report required in Part IV, below, unless OFCCP notifies Polynesian Adventure Tours in writing prior to the expiration date that Polynesian Adventure Tours has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Polynesian Adventure Tours has met all of its obligations under the Agreement.
10. If Polynesian Adventure Tours violates this Conciliation Agreement,
 - A. The procedures set forth at 41 CFR 60-1.34, 60-300.63, and 60-741.63 will govern:
 - 1) If OFCCP believes that Polynesian Adventure Tours violated any term of the Agreement while it was in effect, OFCCP will send Polynesian Adventure Tours a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) Polynesian Adventure Tours 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 Polynesian Adventure Tours 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.

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. Polynesian Adventure Tours may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-300.66, and 41 CFR 60-741.66 and/or other appropriate relief for violation of this Agreement.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. 41 CFR 60-300.44 (h) – AUDIT AND REPORTING SYSTEM – VEVRAA

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to design and implement an audit and reporting system, as required by 41 CFR 60-300.44(h)(1). Specifically, Polynesian Adventure Tours failed to measure Polynesian Adventure Tours' compliance with the affirmative action program's specific obligations; and document the actions taken to comply with the obligations of 41 CFR 60-300.44(h)(1)(i) through (v).

REMEDY: Polynesian Adventure Tours must design and implement an audit and reporting system, as required by 41 CFR 60-300.44(h)(1). Specifically, Polynesian Adventure Tours must design and implement an audit and reporting system that measures their compliance with the affirmative action program's specific obligations; and documents the actions taken to comply with these obligations.

2. 41 CFR 60-300.44 (f) – OUTREACH – VEVRAA

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours 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). Specifically, Polynesian Adventure Tours did not take any actions to conduct appropriate outreach and positive recruitment activities to recruit protected veterans.

REMEDY: Polynesian Adventure Tours will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified protected veterans, such as those described at 41 CFR 60-300.44(f) (2). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, translating military experience, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Working with the veterans' counselors and coordinators (or "Vet Reps") at local colleges and universities to identify qualified temporary and permanent job candidates;
- Working with the Local Veterans' Employment Representative (LVER) in the American

Job Center nearest to the contractor to identify qualified permanent job candidates. See <https://www.careeronestop.org/businesscenter/recruitandhire/hiringadiverseworkforce/veterans.aspx>;

- Participating in job fairs targeting veterans;
- Using the national Veterans Employment Center (VEC) to search verified profiles of veteran job candidates and post job opportunities. See <https://www.vets.gov/veterans-employment-center>; and
- Using local veteran service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on veterans to recruit qualified temporary and permanent job candidates.

Additional examples are in the text of the regulations.

Polynesian Adventure Tours must annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-300.44(f) (3). Polynesian Adventure Tours must document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-300.44(f) (4).

3. 41 CFR 60-741.44 (h) – AUDIT AND REPORTING SYSTEM – SECTION 503

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to design and implement an audit and reporting system, as required by 41 CFR 60-741.44(h)(1). Specifically, Polynesian Adventure Tours failed to measure Polynesian Adventure Tours' compliance with the affirmative action program's specific obligations; and document the actions taken to comply with the obligations of 60-741.44(h)(1)(i) through (v).

REMEDY: Polynesian Adventure Tours must design and implement an audit and reporting system, as required by 41 CFR 60-741.44(h)(1). Specifically, Polynesian Adventure Tours must design and implement an audit and reporting system that measures their compliance with the affirmative action program's specific obligations; and documents the actions taken to comply with these obligations.

4. 41 CFR 60-741.45 – UTILIZATION – SECTION 503

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to evaluate its utilization of individuals with disabilities using the goal established by OFCCP, in violation of 41 CFR 60-741.45. Specifically, Polynesian Adventure Tours conducted no utilization analysis.

REMEDY: Polynesian Adventure Tours must annually evaluate its utilization of individuals with disabilities using the 7 percent goal established by OFCCP, as required by 41 CFR 60-741.45. When conducting this utilization analysis, Polynesian Adventure Tours must use the job groups established for utilization analyses required by Executive Order 11246, as required by 41

CFR 60-741.45(d)(2). However, if Polynesian Adventure Tours has a total workforce of 100 or fewer employees, it may, instead, choose to measure the representation of individuals with disabilities in its workforce as a whole, using the 7 percent goal established by OFCCP, as permitted by 41 CFR 60-741.45(d)(2)(i). Should the percentage of individuals with disabilities in one or more job groups or in their workforce be less than the utilization goal, Polynesian Adventure Tours must take steps, as required by 41 CFR 60-741.45(e), to determine whether and where impediments to equal employment exist, and must develop and execute action-oriented programs to correct any identified problems, as required by 41 CFR 60-741.45(f).

5. 41 CFR 60-300.45 (c) – BENCHMARK – VEVRAA

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to document the hiring benchmark it established and failed to maintain hiring benchmark records for three years, as required in 41 CFR 60-300.45(c)].

CORRECTIVE ACTION: Polynesian Adventure Tours must establish a hiring benchmark for each of its establishments, on an annual basis, using one of the two methods prescribed in 41 CFR 60-300.45(b). Polynesian Adventure Tours must document its hiring benchmark, and, if Polynesian Adventure Tours sets its benchmark using the five-factor approach described in 41 CFR 60-300.45(b)(2), it must also document each factor that it considered in establishing its benchmark and the relative significance it accorded to each one. Polynesian Adventure Tours must retain these records for three years, as required by 41 CFR 60-300.45(c).

6. 41 CFR 60-300.44 (k) – DATA COLLECTION – VEVRAA

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to document and maintain the required data pertaining to applicants and hires of veterans, in violation of 41 CFR 60-300.44(k).

CORRECTIVE ACTION: Polynesian Adventure Tours must document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-300.44(k): The number of applicants who self-identified as protected veterans, or who are otherwise known to be protected veterans; The total number of job openings and total number of jobs filled; The total number of applicants for all jobs; The number of protected veteran applicants hired; and The total number of applicants hired.

7. 41 CFR 60-741.44 (k) – DATA COLLECTION – 503

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to document and maintain the required data pertaining to applicants and hires of individuals with disabilities, in violation of 41 CFR 60-741.44(k).

CORRECTIVE ACTION: Polynesian Adventure Tours must document the following computations or comparisons pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-741.44(k): The number of

applicants who self-identified as individuals with disabilities, or who are otherwise known to be individuals with disabilities; The total number of job openings and total number of jobs filled; The total number of applicants for all jobs; The number of applicants with disabilities hired; and The total number of applicants hired.

8. 41 CFR 60-741.44 (f) – OUTREACH – SECTION 503

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document this review, assess their effectiveness, and document these activities, in violation of 41 CFR 60-741.44(f)(1)(i). Specifically, Polynesian Adventure Tours did not take any actions to conduct appropriate outreach and positive recruitment to recruit individuals with disabilities.

REMEDY: Polynesian Adventure Tours 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). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Creating internship programs for students with disabilities from local colleges and universities;
- Using the Workforce Recruitment Program (WRP) for students and graduates with disabilities to identify qualified temporary and permanent job candidates. See <http://wrp.jobs/employers/>;
- Participating in job fairs targeting qualified individuals with disabilities;
- Using local disability service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on disability to recruit qualified temporary and permanent job candidates; and
- Identifying and recruiting students with disabilities studying in science, engineering, mathematics, computer science, and some fields of business for internships using American Association for the Advancement of Science (AAAS) Entry Point program. See <http://ehrweb01.aaas.org/entrypoint/>.

Additional examples are in the text of the regulations.

Polynesian Adventure Tours will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f) (3). Polynesian Adventure Tours will document all activities it undertakes to comply with this

section, in accordance with 41 CFR 60-741.44(f) (4).

9. 41 CFR 60-1.12 – RECORD KEEPING

VIOLATION: During the period July 5, 2017 through June 30, 2019, Polynesian Adventure Tours failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e); maintain its current AAP and documentation of its good faith effort, as required by 41 CFR 60-1.12(b); preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b); maintain and have available records showing the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as required by 41 CFR 60-1.12(c). Specifically, Polynesian Adventure Tours failed to collect and maintain applicant, testing, interview, hiring or other general personnel or employment records; failed to keep the records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurred later.

CORRECTIVE ACTION: Polynesian Adventure Tours must 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 Polynesian Adventure Tours 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); maintain its current AAP and documentation of its good faith efforts, as required by 41 CFR 60-1.12(b); preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, as required by 41 CFR 60-1.12(b); maintain and/or have available records showing: the gender, race, and ethnicity of each employee; and where possible, the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

PART IV. REPORTS REQUIRED

1. Polynesian Adventure Tours shall send two (2) reports to: Lynda Sakseangvirat, District Director, Hawaii Area Office, 300 Ala Moana Blvd., P.O. Box 50149, Honolulu, Hawaii 96850. Polynesian Adventure Tours agrees to retain records pertinent to the violations cited in Part III above and to the reports submitted in compliance with Paragraph 3, below. These records shall include data and information underlying the required reports, specifically, but not limited to all applications and personnel records. The records will be retained until the expiration of this Agreement or consistent with regulatory requirements, whichever is later.

REPORTS DUE DATES

January 31, 2022
January 31, 2023

PERIOD COVERED

Effective Date through December 31, 2021
January 1, 2022 through December 31, 2022

2. The reports shall include at least:

VIOLATION #1: A report that includes specific documentation showing that Polynesian Adventure Tours designed and implemented an audit and reporting system, as required by 41 CFR 60-300.44(h)(1).

VIOLATION #2: A report that includes specific documentation showing that Polynesian Adventure Tours has taken 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).

VIOLATION #3: A report that includes specific documentation that shows Polynesian Adventure Tours designed and implemented an audit and reporting system, as required by 41 CFR 60-741.44(h)(1).

VIOLATION #4: A report that includes specific documentation that shows Polynesian Adventure Tours annually evaluated its utilization of individuals with disabilities using the 7 percent goal established by OFCCP, as required by 41 CFR 60-741.45.

VIOLATION #5: A report that includes specific documentation that shows Polynesian Adventure Tours established a hiring benchmark for each of its establishments, on an annual basis, using one of the two methods prescribed in 41 CFR 60-300.45(b).

VIOLATION #6: A report that includes specific documentation that shows Polynesian Adventure Tours documented and maintained the computations or comparisons of veterans pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-300.44(k).

VIOLATION #7: A report that includes specific documentation that shows that Polynesian Adventure Tours documented and maintained the computations or comparisons of individuals with disabilities pertaining to applicants and hires, on an annual basis, and will maintain this data for three (3) years, as required by 41 CFR 60-741.44(k):

VIOLATION #8: A report that includes documentation that Polynesian Adventure Tours has taken appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit individuals with disabilities, such as those described at 41 CFR 60-300.741(f)(2).

VIOLATION #9: A report that includes documentation that Polynesian Adventure Tours has kept and preserved 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.

3. Polynesian Adventure Tours 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 date occurs later.

PART V: SIGNATURES

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Polynesian Adventure Tours, 2880 Kilihau Street, Honolulu, Hawaii 96819-2071.

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

Terry Fisher
President
Polynesian Adventure Tours
2880 Kilihau Street
Honolulu, HI 96819-2071

DATE: 7/31/2020

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

(b) (6), (b) (7)(E)
Compliance Officer
Hawaii Area Office
Pacific Region

DATE: _____

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

Lynda C. Sakseangvirat
District Director
San Jose, Hawaii Area, and Guam Field
Offices

DATE: 08/03/2020