

CONCILIATION AGREEMENT

Between

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

And

CHILDREN'S HOSPITAL OF PHILADELPHIA
3401 CIVIC CENTER BOULEVARD
PHILADELPHIA, PA 19083

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") commenced a compliance evaluation of Children's Hospital of Philadelphia ("CHOP") facility located at 34th Street and Civic Center Boulevard, Philadelphia, PA 19083, in January 2012 and found that CHOP was not in compliance with Executive Order 11246, as amended ("E.O. 11246") and its implementing regulations at 41 CFR Sections 60-1 and 60-2. OFCCP notified CHOP of the initial violations found and the corrective actions required in a Notice of Violations ("NOV") issued on September 28, 2016 and in the Show Cause Notice ("SCN") issued on May 9, 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 CHOP 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 CHOP'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 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 CHOP violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. CHOP 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. CHOP will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. CHOP understands that nothing in this Agreement relieves CHOP 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"), 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. CHOP 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(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 day it is signed by the Regional Director of the Mid-Atlantic Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 calendar days of the date the Regional Director signs the Agreement.
9. This Agreement will expire sixty (60) days after CHOP submits the final report required in Part IV-1 below, unless OFCCP notifies CHOP in writing prior to the expiration date that CHOP has not fulfilled all of its obligations under the Agreement, in which case, the Agreement is automatically extended until the date that OFCCP determines CHOP has met all of its obligations under the Agreement.
10. If CHOP violates this Conciliation Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that CHOP violated any term of the Agreement while it was in effect, OFCCP will send CHOP a written notice stating the alleged violations and summarizing any supporting evidence.
 - 2) CHOP 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 CHOP 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. CHOP 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 CHOP of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that CHOP violated any laws.

PART III. SPECIFIC VIOLATIONS AND REMEDIES

1. **VIOLATION:** OFCCP found that CHOP did not afford equal employment opportunity to Female applicants on the basis of their gender for the Food Service Worker position, as required by 41 CFR 60-1.4(a)(1). Specifically, during the period January 1, 2011 through December 31, 2011, CHOP failed to apply its selection criteria uniformly for all applicants, which resulted in a statistically significant difference in the rates at which Female and Male applicants were hired into the Food Service Worker position.

Additionally, CHOP's selection process for the Food Service Workers position required applicants to pass an initial screen in order to be moved to the interview phase. OFCCP's analysis of the screening steps of the selection process, based on the applicant flow data provided by CHOP, showed that the initial recruiter screen resulted in a disproportionate number of women rejected for interviews.

REMEDY: Within 90 days of OFCCP's NOV dated September 28, 2016, CHOP modified its selection process to ensure that all prescreen questions are objective and specific to the basic requirements of the position; reviewed job description basic requirements to remove any unintentional barriers; and defined and documented sourcing strategies, including Internet Applicant data management techniques, using objective criteria. CHOP will examine and monitor its selection procedures as necessary and ensure that selection criteria are applied uniformly and the hiring decisions for the Food Service Workers position are made in a non-discriminatory manner. In addition, CHOP agrees to take the following actions:

A. Notice: Within 15 calendar days of the Effective Date of this Agreement, CHOP must notify the Female applicants shown on Attachment A of the terms of this Agreement by mailing by first class mail to each individual in the affected class the Notice to Affected Applicants, Claim Form, Release of Claims Under Executive Order 11246, and a postage paid return envelope. CHOP will notify OFCCP of all letters returned as undeliverable on a weekly basis. In addition, within 15 days after expiration of the response deadline set out in the Claim Form, CHOP will provide OFCCP with a list of the individuals in the affected class who have not yet responded to the Notice to Affected Applicants and/or have not returned a signed Claim Form. OFCCP will then attempt to obtain and provide updated addresses to CHOP within 15 days of receiving the list from CHOP. CHOP agrees to mail by certified mail, return receipt requested, a second Notice to Affected Applicants, Claim Form, Release of Claims Under Executive Order 11246, and a postage paid return envelope to all individuals for whom updated addresses were obtained within 15 days of receiving the updated addresses.

B. Eligibility: All members of the affected class (listed on Attachment A) who complete, sign, and return the Claim Form and Release of Claims Under Executive Order 11246 within 45 days of the postmarked date on the envelope containing the first or second Notice to Affected Applicants and Claim Form ("Eligible Class Members") will receive a share of the monetary settlement and, if indicating an interest in employment, will be eligible to be considered for a job pursuant to this Agreement. If an individual receives, but does not return the Claim Form to CHOP within 45 days of the postmarked date on the envelope containing the first or second Notice to Affected Applicants and Claim

Form, she will no longer be entitled to a payment or consideration for a job under this Agreement.

Within 15 days of the latest response deadline set out in the Claim Form, CHOP will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Claim Form by the deadline). Within 15 days after receiving the list, OFCCP will approve the final list of Eligible Class Members or discuss with CHOP any issues necessary to finalize the list, such as inclusion or exclusion of certain individuals.

All Eligible Class Members are entitled to their share of the monetary settlement regardless of whether they are interested in employment with CHOP.

C. Monetary Settlement: CHOP agrees to distribute \$50,000 (\$48,877.64 in back pay and \$1,122.36 in interest), less legal deductions required by law from back pay only (such as federal, state and/or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among all Eligible Class Members on the final approved list. CHOP will pay the Internal Revenue Services ("IRS") the employer's share of social security withholdings and will mail each Eligible Hiring Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS Forms will be mailed at the end of the year. CHOP will disburse the monetary settlement within 15 calendar days after OFCCP approves the final list of Eligible Class Members.

Within five calendar days of CHOP's receipt of a check to an Eligible Hiring Class Member returned as undeliverable, CHOP will notify OFCCP of this fact via email sent to Marlene Y. Williams, at (b) (6) @dol.gov. OFCCP will attempt to locate the Eligible Class Member, and if OFCCP obtains an alternate address, CHOP will re-mail the check within 5 calendar days of receiving an alternate or corrected address. Any check that remains uncashed 120 days after the initial date the check was mailed to the Eligible Hiring Class Member will be void. With respect to any uncashed funds (including back pay and/or interest checks), if the per-person distribution would result in a payment of \$25 or more to each class member, CHOP will make a second distribution to all Eligible Class Members who cashed their first check.

D. Employment: As positions become available, CHOP will consider qualified Eligible Class Members not currently employed by CHOP who express interest in employment with CHOP until 3 Eligible Class Members are hired as Food Service Workers or the list of such Eligible Class Members expressing interest in employment is exhausted, whichever comes first. Any employment offer made to an Eligible Class Member by CHOP will be sent by certified mail, return receipt requested.

Eligible Class Members will be allowed at least two weeks to report for work after receiving a written job offer from CHOP. The Eligible Class Members hired into Food Service Workers position pursuant to this agreement must be paid the current wage rate for the Food Service Workers position in accordance with the terms of the applicable collective bargaining agreement and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other Food Service Worker employees.

E. Revised Hiring Process.

- 1) Eliminate Discriminatory Selection Procedures: Within 90 days of receiving OFCCP's NOV dated September 26, 2016, CHOP ceased using any selection procedures that resulted in adverse impact in Food Service Worker position, as required under 41 C.F.R. § 60-3.4D. CHOP agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R. Part 60-3. CHOP will not use any selection procedure in hiring Food Service Workers that has an adverse impact on applicants of a particular sex unless it properly validates the procedure according to these regulations.
 - a) Review and Revision Required: CHOP already has revised, in writing, the practices, policies, and procedures it uses to select applicants for Food Service Worker positions ("Revised Hiring Process"). Specifically, CHOP will continue to ensure all policies and qualification standards are uniformly applied to all Food Service Worker applicants; and
 - b) Will list clearly on its job postings the minimum qualifications, including required skills and certifications, for the Food Service Worker position.
- 2) Recordkeeping and Retention: CHOP already has taken several steps to ensure compliant recordkeeping and retention in accordance with 41 C.F.R. § 60-1.12 (a) and Part 60-3. CHOP created a Senior HR Specialist role in May 2017 to oversee affirmative action and equal opportunity issues, including record keeping practices; CHOP changed its applicant tracking system in November 2016, and ensured that the new system has expanded record retention features to meet the OFCCP's three-year record keeping obligations for veteran and disability outreach; CHOP created and implemented training, including on-demand online sessions for Recruitment on record retention and documentation standards to set the organization's expectations insofar as proper record keeping is concerned; and CHOP created a record-keeping Trifold brochure as a resource for employees.
- 3) Training: In 2017 and 2018, CHOP has conducted the following training sessions, which included individuals involved in any way in recruiting, selecting and tracking applicants for Food Service Worker positions.
 - August 2017 Recruiting Summit: 1 hour presentation, 16 hours preparation
 - 10/25/17 Formal Training: 1.5 hours presentation, 8 hours preparation
 - 11/29/17 Formal Training: 1 hour presentation, 8 hours preparation
 - 12/20/17 Formal Training: 1 hour presentation, 8 hours preparation
 - February 2018 1-on-1's: 10 hours presentation, 10 hours preparation, 5 hours follow-up
 - March 2018 1-on-1's: 6 hours presentation, 6 hours preparation, 3 hours follow-up
 - March 2018 Recruiting Summit: 1 hour presentation, 20 hours preparation

The training included instruction in: the proper implementation of the recruitment, tracking, and selection procedures; neutral application of the specified qualifications and criteria that will be used at each step in the hiring process; the procedures to be used to document the decision made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance 41 C.F.R. § 60-1.12(a) and Part 60-3. CHOP will meet with Food Service Worker management and all individuals responsible for the Food Service Worker selection process and review its equal

employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that Female applicants, who benefit from the provisions of this agreement, are not retaliated against.

2. **VIOLATION:** During the period January 1, 2011 through December 31, 2011, CHOP failed to preserve all personnel or employment records for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later, in violation of 41 CFR 60-1.12(a). Specifically, CHOP failed to preserve and provide copies of all employment applications, resumes, candidate profiles, and interview notes.

REMEDY: CHOP will preserve and maintain all personnel and employment records for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later, in accordance with the requirements 41 CFR 60-1.12(a). Specifically, CHOP has indicated as of April 2017, CHOP no longer uses paper applications, and instead uses an electronic application tracking system. CHOP agrees this violation will not recur.

3. **VIOLATION:** During the period January 1, 2011 through December 31, 2011, CHOP, failed to demonstrate its good faith efforts to obtain the established goals and objectives by failing to develop and implement action-oriented programs addressing job groups where there is a declaration of underutilization as required under 41 CFR 60-2.16 and 41 CFR 60-2.17(b) and (c). Specifically, CHOP failed to provide documentation of its good faith efforts for minorities in Job Groups 203 and 23.

REMEDY: On April 20, 2017, CHOP stated that Job Group 203 – Clinical Nurse III has been restructured in its current Affirmative Action Plan. CHOP indicated it has established feeder pools beginning with Nurse Residents and less-experienced nurses all the way up to experienced and advanced practice Nurses. Job group 203 in 2018 includes internal development to increase the pipeline of potential Clinical Nurse IIIs. CHOP has agreed to provide their current job group analysis, utilization analysis, and goals that were established to demonstrate their good faith efforts towards minority applicants and employees.

In addition, CHOP has indicated Job Group 23-Miscellaneous Medical Professionals job no longer exists in its current Affirmative Action Plan. The job titles that were previously in this job group were moved into the appropriate job groups based on similar skills and responsibilities. CHOP agrees to provide documentation showing where each job title currently resides in their job group analysis.

PART IV: REPORTS REQUIRED

CHOP must submit the documents and reports described below to:

U.S. Department of Labor
Office of Federal Contract Compliance Programs
Attention: Marlene Y. Williams,
Assistant District Director
Robert Nix Federal Building
900 Market Street – Room 311
Philadelphia, PA 19107

CHOP must submit 2 progress reports covering each six month period this Agreement is in effect. The first progress report will be due seven months after the Effective Date of this Agreement and must cover the six-month period beginning with the Effective Date. Each subsequent report must cover the successive six-month period, and must be submitted within 30 calendar days after the close of that six-month period. CHOP will submit the following in each progress report.

1. Documentation of the monetary payment to all Eligible Class Members as specified in the Remedy to Violation 1 above. The documentation must include the name of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. CHOP must provide OFCCP with copies of all canceled checks upon request;
2. Documents of specific hiring activity for Eligible Class Member who were hired as Food Service Workers in accordance with this Agreement, including name, date of hire, job title hired into, and rate of pay;
3. For Eligible Class Members who were considered for employment but were not hired, CHOP will provide the reason for non-placement along with all relevant documentation (e.g., documentation that the Eligible Class Member declined a job offer);
4. A description of: any selection procedure(s) revised by CHOP since September 28, 2016, regarding the process of filling openings in the Food Service Worker job group, including any revision(s) to its recruitment process, prescreening of job applications, or interviewing and testing of applicants; as well as any revisions to CHOP's tracking methods including race, ethnicity and gender information. CHOP will also include a description of the internal audit and reporting systems put into place for monitoring CHOP's progress and program effectiveness;
5. Documentation of CHOP's current Job Group Analysis, Utilization Analysis, Availability Analysis and Placement Goals. These will be submitted with the 1st and 2nd reports – only.

CHOP will retain all records and data pertinent to the violations resolved by this Agreement and used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later.

This Conciliation Agreement will remain in full force and effect until sixty (60) days following CHOP's submission of the final report, or until such time as OFCCP has deemed that CHOP has met all conditions of this Agreement. The date of signature by the OFCCP Regional Director will constitute the effective date of this Agreement.

INTEGRATION CLAUSE: This Conciliation Agreement represents the full Agreement between CHOP and OFCCP, and this Agreement supersedes any other agreements, oral or written. In signing this Agreement, neither CHOP nor OFCCP relies upon any promise, representation of fact or law, or other inducements that are not expressed in this Agreement. This Agreement may be modified only by written agreement of the Parties affected and may not be modified by any oral agreement.

PART V: SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Children's Hospital of Philadelphia, 3401 Civic Center Boulevard, Philadelphia, PA 19083.

Date: 5/31/2018

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

Douglas G. Hook
Chief Operating Officer
Children's Hospital of Philadelphia

Date: 6/1/2018

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

MICHELE HODGE (b) (6),
Regional Director (b) (7)(C)
OFCCP Mid-Atlantic Region

Attachment A – Eligible Class Members

Last **First**
Name **Name**

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

