

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Triple H Services LLC ("Respondent" or "Triple H"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (collectively "the Parties").

I. BACKGROUND

WHEREAS, by letter dated May 1, 2017, IER notified Respondent in writing that it had initiated an independent investigation, DJ# 197-55-70 ("IER Investigation"), to determine whether Respondent had engaged in unfair immigration-related employment practices prohibited by 8 U.S.C. § 1324b ("Act").

WHEREAS, IER concluded based upon the IER Investigation that reasonable cause exists to believe that from at least December 15, 2016, to at least May 15, 2017, Respondent engaged in a pattern or practice of discriminatory recruitment and hiring based on citizenship status by preferring H-2B visa workers over U.S. workers in violation of 8 U.S.C. § 1324b(a)(1).

WHEREAS, this Agreement is intended to facilitate the resolution of IER's investigation and does not constitute an admission by Respondent of any liability or act in violation of 8 U.S.C. § 1324b.

WHEREAS, IER and Respondent wish to resolve IER's reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, IER and Respondent agree as follows:

II. TERMS OF AGREEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the "Effective Date." The term of this Agreement is two (2) years following the Effective Date.
2. Respondent shall pay a civil penalty to the United States Treasury in the amount of fifteen thousand six hundred dollars (\$15,600). Respondent shall provide IER with the name, title, email address, and telephone number of the individual responsible for effectuating payment of the civil penalties no later than five (5) business days from the Effective Date.
3. The monies discussed in Paragraph 2 shall be paid via the FedWire electronic fund transfer system within fifteen (15) business days of the Effective Date or receipt of fund transfer instructions from IER, whichever is later. On the day of payment, Respondent

shall confirm payment via email to Erik Lang at erik.lang@usdoj.gov.

4. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Respondent any additional civil penalty for the pattern or practice of discriminatory hiring and recruiting based on citizenship status in violation of 8 U.S.C. § 1324b(a)(1) that is the subject of the IER Investigation through the Effective Date.
5. Respondent shall set aside a back pay fund of eighty-five thousand dollars (\$85,000) to compensate Qualified Individuals who sought employment in Virginia, as described below:
 - (a) A "Qualified Individual," as described in Paragraph 5, shall be any work authorized individual who (i) applied for a position as a landscape laborer with Respondent in Virginia from December 15, 2016 through April 1, 2017 through the Virginia Workforce Commission Job Board (Virginia Workforce Connection); (ii) met the minimal qualifications; and (iii) did not receive an interview from Respondent or decline further consideration.
 - (b) Within thirty (30) calendar days from the Effective Date, IER will send a written notification of this Agreement ("Notice Letter") and an Applicant Back Pay Claim Form ("Claim Form") by U.S. mail and electronic mail (if an email address is available) to the six (6) potential Qualified Individuals identified by IER to determine if each is a Qualified Individual entitled to receive compensation for lost wages due to Respondent's alleged unfair employment practices.
 - (c) Applicants who wish to be considered for back pay relief will have forty-five (45) calendar days from the date of the Notice Letter to return the Claim Form to IER, unless an applicant can demonstrate good cause (as determined by IER) for the failure to return a Claim Form postmarked by the specified deadline.
 - (d) No later than 90 calendar days from the date of the Notice Letter, IER will initially calculate and notify Respondent of the amount of back pay owed to each claimant IER determines to be a Qualified Individual. IER will perform this initial calculation using a formula that multiplies the hourly rate specified in the relevant labor certification application by the number of hours specified in the contract period, less mitigation earnings. If the total amount of back pay that would be owed to Qualified Individuals exceeds \$85,000, IER shall initially calculate a *pro rata* amount of back pay for each Qualified Individual using the fraction that represents the amount of back pay owed to the Qualified Individual compared to the total back pay fund amount. The Parties agree that Respondent's total liability to Qualified Individuals under this Paragraph shall not exceed \$85,000.
 - (e) Within thirty (30) calendar days from the date on which IER notifies Respondent of its initial determinations regarding the amounts owed to

each Qualified Individual pursuant to Paragraph 5(d), Respondent will notify IER in writing if Respondent disagrees with any back pay determination, and provide an explanation for its position along with copies of any supporting documents;

- (f) If Respondent disagrees, under Paragraph 5(e), with IER's back pay determination under Paragraph 5(d), IER will make, in its sole discretion, the final determination regarding the amount to be paid, if any, and will, within thirty (30) calendar days of receiving Respondent's disagreement under Paragraph 5(e), notify Respondent in writing of its final determinations. If necessary, IER's final determination will re-calculate any *pro rata* back pay determinations, taking into account the final number of Qualified Individuals and amounts to be paid;
- (g) If Respondent agrees with IER's back pay determinations under Paragraph 5(d), IER's back pay determinations will become final. Within thirty (30) calendar days of receiving the back pay determination pursuant to Paragraph 5(d), Respondent shall send by first class mail to each Qualified Individual for whom IER has notified Respondent that back pay is to be paid, a Back Pay Determination Letter indicating the amount of back pay to be received. Respondent may enclose with the Back Pay Determination Letter a release of liability for hiring discrimination claims arising from the 2017 hiring season and shall include all applicable tax forms. The Back Pay Determination Letter shall request that the Qualified Individuals return any release and tax forms to Respondent within thirty (30) calendar days. On the same day Respondent mails out the Back Pay Determination Letters, Respondent shall send IER by regular mail or e-mail (with attachments in .PDF format), copies of the letters and addressed envelopes it sends to Qualified Individuals.
- (h) If Respondent disagrees with any of IER's back pay determinations under Paragraph 5(d), Respondent shall, within ten (10) calendar days of receiving IER's final back pay determination under Paragraph 5(f), send each Qualified Individual a Back Pay Determination Letter and enclosures in accordance with the procedures in Paragraph 5(g).
- (i) Within fifteen (15) calendar days from Respondent's receipt of a signed release of liability and applicable tax forms from a Qualified Individual, Respondent shall send the individual the back pay amount (as determined by IER) in the form of a check via certified mail or reliable courier service, accompanied by a payment transmittal notice. On the same day, Respondent shall send a copy of the check and payment transmittal notice to Erik.Lang@usdoj.gov. Respondent shall withhold applicable taxes based on the rates of the current year and shall provide each Qualified Individual with all applicable income tax reporting forms. Respondent is responsible for paying any employer-side taxes or contributions due to the

federal or state government based on the payments made Qualified Individuals pursuant to this Settlement Agreement. Respondent shall follow the applicable instructions contained in IRS Publication 957 and credit the Qualified Individuals' back pay award to calendar quarters of the year when the back wages would have been earned for Social Security purposes.

- (j) Respondent shall submit in advance all written communications to Qualified Individuals relating to this Agreement, including a release of liability, to IER for review and approval, and any release must be limited to the claims referenced in this Agreement.
- (k) Any remaining amount of the \$85,000 back pay fund that has not been distributed to Qualified Individuals pursuant to the process set forth in this paragraph shall revert to Respondent.

6. For the term of this Agreement, Respondent shall engage in required and supplemental recruitment of U.S. workers for all available positions before employing foreign, H-2B visa workers for those positions. These required and supplemental recruitment activities shall include, at a minimum, the following:

- a. Respondent shall not place H-2B visa workers in a state where it has not posted a state workforce agency job order.
- b. Respondent shall provide to IER copies of all advertisements and job postings within seven (7) business days of utilizing them. Such advertisements shall list the name and city of each location at which landscape laborers employed by Respondent will perform grounds maintenance and make clear to U.S. job seekers that they can work at a single location.
- c. Respondent shall not allow an H-2B visa worker who lacks English fluency to supervise a U.S. worker who lacks fluency in the language spoken by the H-2B visa worker. U.S. workers interested in a team leader position will be given preference for such if they are equally or better qualified than an interested H-2B visa worker.
- d. With respect to job orders, and electronic, on-line platforms, including state workforce agency job banks, Respondent shall:
 - i. Ensure that each job order is accessible and visible to job seekers in the area of intended employment;
 - ii. Not disable any functionality of the electronic, on-line platform that would prevent an applicant from applying on-line;
 - iii. Not disable any notifications available as part of the electronic, on-line platform that indicate that there is a new applicant;

deciding which individuals are ineligible for hire due to prior criminal convictions. Upon clarification of its procedures, Respondent shall ensure that all of the employment applications it makes available to the public within a particular state contain the same language conveying the standard and timeframe for ineligibility based on a prior criminal conviction. Respondent shall consistently apply the same procedures and standards to U.S. workers and H-2B visa workers.

9. During the term of this Agreement, Respondent shall provide, for review and approval, any changes in employment policies as they relate to nondiscrimination on the basis of citizenship, immigration status and national origin to IER at least thirty (30) calendar days prior to the effective date of such revised policies.
10. During the term of this Agreement, Respondent shall retain a photocopy or electronic copy of every job application and resume that is submitted to Respondent, including but not limited to those accessible through a state workforce agency job bank that relate to a Respondent job order.
11. During the Term of this Agreement, Respondent shall keep a written, record of the action(s) it took with respect to each application and resume identified in the previous Paragraph, including whether or not the individual was interviewed, offered a job, hired, or not selected and the reason(s) for the non-selection.
12. During the Term of this Agreement, Respondent shall keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it submits to and receives from the U.S. Department of Labor and U.S. Citizenship and Immigration Services.
13. Within ninety (90) calendar days from the Effective Date, all individuals with any responsibility for recruiting, advertising, hiring, interviewing, or onboarding, shall receive IER-provided free training on their obligation to comply with 8 U.S.C. § 1324b.
 - a. The trainings shall consist of viewing a remote IER webinar presentation, which IER shall provide on a date mutually agreeable to the parties;
 - b. All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Respondent shall bear all costs associated with these training sessions;
 - c. During the term of this Agreement, all new staff hired or promoted by Respondent into positions with any responsibility listed Paragraph 13, after the training described in Paragraph 13(a) has been conducted, shall review a recorded version of the webinar within sixty (60) calendar days of hire or promotion; and

- d. Respondent shall confirm the initial webinar participation required in Paragraph 13(a), and subsequent viewings of the webinar training required by Paragraph 13(c), via email to erik.lang@usdoj.gov within ten (10) calendar days of completion of each training session.
14. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Respondent as necessary to determine Respondent's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Respondent's premises, examine witnesses, and examine and copy Respondent's documents.
15. Nothing in this Agreement limits IER's right to inspect Respondent's Forms I-9 within three business days pursuant to 8 C.F.R. § 274a.2(b)(2)ii.
16. If IER has reason to believe that Respondent is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Respondent of the potential violation without opening an investigation. Respondent will then have thirty (30) business days from the date of IER's notification to cure the violation to IER's satisfaction before IER deems Respondent to be in violation of this Agreement.
17. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Respondent, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Respondent's employment practices.
18. This Agreement resolves any and all differences between the Parties with respect to all Respondent locations relating to the IER Investigation, DJ # 197-55-70, through the Effective Date.
19. This Agreement may be enforced in the United States District Court for the Western District of North Carolina. This paragraph, or the initiation of a lawsuit to enforce the Agreement under this paragraph, including any counterclaims asserted, does not constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement. For the purposes of an action to enforce this Agreement, the Parties agree that the obligations set forth in each and every provision of Part II of this Agreement are material.

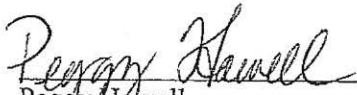
III. OTHER TERMS

20. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this Agreement, both Parties shall be deemed to have drafted it.

21. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that IER has reasonable cause to believe that Respondent committed is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.
22. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
23. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. Any modifications to the Agreement must be in writing and signed or affirmed by both Parties.
24. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by facsimile signatures.

Triple H Services, L.L.C.

By:

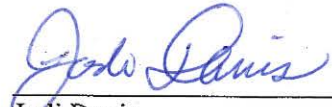

Peggy Howell

General Manager/Chief Financial Officer

Dated: 6/22/18

Immigrant and Employee Rights Section

By:


Jodi Danis

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Erik W. Lang
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Dated: 6/26/18