*OMB Approval: 1205-0466*
*Expiration Date:* 11/30/2025

H-2A Agricultural Clearance Order
Form ETA-790A
**U.S. Department of Labor**

## A. Job Offer Information

1. Job Title * FARMWORKERS AND LABORERS, CROP

| 2. Workers Needed * | a. Total | b. H-2A Workers | Period of Intended Employment | |
|---|---|---|---|---|
| | 5 | 5 | 3. First Date * 5/28/2023 | 4. Last Date * 11/10/2023 |

5. Will this job generally require the worker to be on-call 24 hours a day and 7 days a week? * If "Yes", proceed to question 8. If "No", complete questions 6 and 7 below. ☐ Yes ☑ No

6. Anticipated days and hours of work per week *(an entry is required for each box below)* *

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 46 | **a. Total Hours** | 8 | c. Monday | 8 | e. Wednesday | 8 | g. Friday |
| 0 | b. Sunday | 8 | d. Tuesday | 8 | f. Thursday | 6 | h. Saturday |

7. Hourly Work Schedule *
a. 8 : 00 ☑ AM ☐ PM
b. 5 : 00 ☐ AM ☑ PM

**Temporary Agricultural Services and Wage Offer Information**

8a. Job Duties - Description of the specific services or labor to be performed. *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

See Addendum C

| 8b. Wage Offer * | 8c. Per * | 8d. Piece Rate Offer § | 8e. Piece Rate Units / Estimated Hourly Rate / Special Pay Information § |
|---|---|---|---|
| $ 16 . 95 | ☑ HOUR ☐ MONTH | $ ____ . ___ | |

9. Is a completed **Addendum A** providing additional information on the crops or agricultural activities to be performed and wage offers attached to this job offer? * ☑ Yes ☐ N/A

10. Frequency of Pay: * ☑ Weekly ☐ Biweekly ☐ Other (specify): N/A

11. State all deduction(s) from pay and, if known, the amount(s). *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

THE ONLY DEDUCTIONS THAT WILL BE TAKEN ARE THOSE REQUIRED BY LAW; SOCIAL SECURITY, FEDERAL TAX, STATE TAX, DISABILITY, & NYS PAID FAMILY LEAVE.



H-2A Case Number: H-300-23088-886703 Case Status: _____ Determination Date: _____ Validity Period: _____ to _____

## B. Minimum Job Qualifications/Requirements

1. Education: minimum U.S. diploma/degree required. *
☑ None ☐ High School/GED ☐ Associate's ☐ Bachelor's ☐ Master's or higher ☐ Other degree (JD, MD, etc.)

2. Work Experience: number of months required. * 3

3. Training: number of months required. * 0

4. Basic Job Requirements (check all that apply) §

☐ a. Certification/license requirements
☐ b. Driver requirements
☐ c. Criminal background check
☐ d. Drug screen
☑ e. Lifting requirement 75 lbs.
☑ f. Exposure to extreme temperatures
☑ g. Extensive pushing or pulling
☑ h. Extensive sitting or walking
☑ i. Frequent stooping or bending over
☑ j. Repetitive movements

5a. Supervision: does this position supervise the work of other employees? * ☐ Yes ☑ No

5b. If "Yes" to question 5a, enter the number of employees worker will supervise. §

6. Additional Information Regarding Job Qualifications/Requirements. *
*(Please begin response on this form and use Addendum C if additional space is needed. If no additional skills or requirements, enter "**NONE**" below)*

The employer will not guarantee to pay the workers a bonus but reserves the right, at the employers sole discretion, to offer a bonus or to pay an hourly wage rate in excess of the highest applicable rate stated above based on longevity of tenure or exceptional job performance.

## C. Place of Employment Information

1. Place of Employment Address/Location *
17197 RIDGE ROAD

| 2. City * | 3. State * | 4. Postal Code * | 5. County * |
|---|---|---|---|
| HOLLEY | New York | 14470 | Orleans |

6. Additional Place of Employment Information. *(If no additional information, enter "**NONE**" below)* *

RIDGE ROAD IS NY ROUTE 104. THE OFFICE IS ON THE CORNER OF RIDGE ROAD AND THE ORLEANS MONROE COUNTY LINE ROAD.

7. Is a completed **Addendum B** providing additional information on the places of employment and/or agricultural businesses who will employ workers, or to whom the employer will be providing workers, attached to this job order? * ☐ Yes ☑ N/A

## D. Housing Information

1. Housing Address/Location *
17197 RIDGE ROAD

| 2. City * | 3. State * | 4. Postal Code * | 5. County * |
|---|---|---|---|
| HOLLEY | New York | 14470 | Orleans |

6. Type of Housing *(check only one)* *
☑ Employer-provided (including mobile or range) ☐ Rental or public

7. Total Units * 1

8. Total Occupancy * 5

9. Identify the entity that determined the housing met all applicable standards: *
☑ Local authority ☑ SWA ☑ Other State authority ☑ Federal authority ☐ Other (specify): _____

10. Additional Housing Information. *(If no additional information, enter "**NONE**" below)* *

NORTH SIDE OF NY 104, .4 MILE FROM THE ORLEANS MONROE COUNTY LINE ROAD.

11. Is a completed **Addendum B** providing additional information on housing that will be provided to workers attached to this job order? * ☐ Yes ☑ N/A

## E. Provision of Meals

1. Describe how the employer will provide each worker with three meals per day or furnish free and convenient cooking and kitchen facilities. *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

EMPLOYER PROVIDES FREE AND CONVENIENT COOKING AND KITCHEN FACILITIES SO THAT WORKERS CAN PREPARE THEIR OWN
MEALS. WORKERS BUY THEIR OWN FOOD AND EMPLOYER WILL PROVIDE TRANSPORTATION ONCE A WEEK OR AS NEEDED VIA A 7 PASSENGER MINI VAN. THIS WILL ASSURE WORKERS ACCESS TO STORES WHERE THEY CAN PURCHASE GROCERIES AND/OR OTHER INCIDENTALS. ALL VEHICLES WILL BE PROPERLY INSURED AS REQUIRED BY APPLICABLE REGULATIONS.

EMPLOYER IS ULTIMATELY RESPONSIBLE FOR MAINTAINING HOUSING COMPLIANCE. WORKERS WILL BE RESPONSIBLE FOR MAINTAINING HOUSING IN A NEAT, CLEAN MANNER. WORKERS MAY NOT WILLFULLY ABUSE OR DESTROY ANY MACHINERY, TRUCK OR OTHER VEHICLE, EQUIPMENT, TOOLS,
OR OTHER PROPERTY BELONGING TO THE EMPLOYER OR TO OTHER EMPLOYEES. VIOLATORS WILL BE SUBJECT TO DISCHARGE IMMEDIATELY.

| | | | |
|---|---|---|---|
| 2. The employer: * | ☑ **WILL NOT** charge workers for meals. | | |
| | ☐ **WILL** charge each worker for meals at | $ _____ . ____ | per day, if meals are provided. |

## F. Transportation and Daily Subsistence

1. Describe the terms and arrangements for daily transportation the employer will provide to workers. *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

Employer will provide transportation, at no cost to the worker, from the employer provided housing to the actual work site and return at the end of the day via a 5 passenger pick up truck or a 7 passenger mini van.

2. Describe the terms and arrangements for providing workers with transportation (a) to the place of employment (*i.e.*, inbound) and (b) from the place of employment (*i.e.*, outbound). *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

See Addendum C

| | | | |
|---|---|---|---|
| 3. During the travel described in Item 2, the employer will pay for or reimburse daily meals by providing each worker * | a. no less than | $ 15 . 46 | per day * |
| | b. no more than | $ 59 . 00 | per day with receipts |

## G. Referral and Hiring Instructions

1. Explain how prospective applicants may be considered for employment under this job order, including verifiable contact information for the employer (or the employer's authorized hiring representative), methods of contact, and the days and hours applicants will be considered for the job opportunity. *
*(Please begin response on this form and use Addendum C if additional space is needed.)*

CONTACT EMPLOYER AMY MACHAMER AT (585) 638-8838 OR GO TO THE NEAREST ONE STOP CENTER OR CALL 1-877-466-9757.
PRIOR TO REFERRAL EACH WORKER SHOULD HAVE SEEN AND READ A COPY OF THE JOB ORDER AND CONFIRM THAT THEY UNDERSTAND ALL THE TERMS AND CONDITIONS OF EMPLOYMENT AS NOTED IN THE ORDER. THE WORKER SHOULD BE ABLE TO WORK IN ANY OF THE LISTED JOB ACTIVITIES AT THE DISCRETION OF THE EMPLOYER.
WORKERS ARE EXPECTED TO COMPLY WITH ALL RULES IN THIS JOB ORDER AND ANY OTHER LAWFUL JOB RELATED EMPLOYER REQUIREMENTS. VIOLATION OF ANY RULE IN THIS JOB ORDER AND ANY OTHER LAWFUL JOB RELATED EMPLOYER REQUIREMENTS WILL BE CONSIDERED GROUNDS FOR
DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION.

| 2. Telephone Number to Apply * | 3. Extension § | 4. Email Address to Apply * |
|---|---|---|
| +1 (585) 638-8838 | N/A | AMY.MACHAMER@GMAIL.COM |

5. Website Address (URL) to Apply *
N/A

## H. Additional Material Terms and Conditions of the Job Offer

| | |
|---|---|
| 1. Is a completed **Addendum C** providing additional information about the material terms, conditions, and benefits (monetary and non-monetary) that will be provided by the employer attached to this job order? * | ☑ Yes ☐ No |

## I. Conditions of Employment and Assurances for H-2A Agricultural Clearance Orders

By virtue of my signature below, I **HEREBY CERTIFY** my knowledge of and compliance with applicable Federal, State, and local employment-related laws and regulations, including employment-related health and safety laws, and certify the following conditions of employment:

1. **JOB OPPORTUNITY**: Employer assures that the job opportunity identified in this clearance order (hereinafter also referred to as the "job order") is a full-time temporary position being placed with the SWA in connection with an *H-2A Application for Temporary Employment Certification* for H-2A workers and this clearance order satisfies the requirements for agricultural clearance orders in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655, subpart B. This job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR part 655, subpart B. The job opportunity is open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship.

2. **NO STRIKE, LOCKOUT, OR WORK STOPPAGE**: Employer assures that this job opportunity, including all places of employment for which the employer is requesting temporary agricultural labor certification does not currently have workers on strike or being locked out in the course of a labor dispute. 20 CFR 655.135(b).

3. **HOUSING FOR WORKERS**: Employer agrees to provide or secure housing for the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence at the end of the work day. That housing complies with the applicable local, State, and/or Federal standards and is sufficient to house the specified number of workers requested through the clearance system. The employer will provide the housing without charge to the worker. Any charges for rental housing will be paid directly by the employer to the owner or operator of the housing. If public accommodations or public housing are provided to workers, the employer agrees to pay all housing-related charges directly to the housing's management. The employer agrees that charges in the form of deposits for bedding or other similar incidentals related to housing (e.g., utilities) must not be levied upon workers. However, the employer may require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for damage which is not the result of normal wear and tear related to habitation. When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, the employer agrees to provide family housing at no cost to workers with families who request it. 20 CFR 655.122(d), 653.501(c)(3)(vi).

   *Request for Conditional Access to Intrastate or Interstate Clearance System*: Employer assures that the housing disclosed on this clearance order will be in full compliance with all applicable local, State, and/or Federal standards at least 20 calendar days before the housing is to be occupied. 20 CFR 653.502(a)(3). The Certifying Officer will not certify the application until the employer provides evidence that housing has been inspected and approved or, in the case of rental or public accommodations, is otherwise in full compliance.

4. **WORKERS' COMPENSATION COVERAGE**: Employer agrees to provide workers' compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker's employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State's workers' compensation law, the employer agrees to provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for other comparable employment. 20 CFR 655.122(e).

5. **EMPLOYER-PROVIDED TOOLS AND EQUIPMENT**: Employer agrees to provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. 20 CFR 655.122(f), .210(d), or .302(c).

6. **MEALS**: Employer agrees to provide each worker with three meals a day or furnish free and convenient cooking and kitchen facilities to the workers that will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer will state the charge, if any, to the worker for such meals. The amount of meal charges is governed by 20 CFR 655.173. 20 CFR 655.122(g). When a charge or deduction for the cost of meals would bring the worker's wage below the minimum wage set by the FLSA at 29 U.S.C. 206, the charge or deduction must meet the requirements of 29 U.S.C. 203(m) of the FLSA, including the recordkeeping requirements found at 29 CFR 516.27.

   For workers engaged in the herding or production of livestock on the range, the employer agrees to provide each worker, without charge or deposit charge, (1) either three sufficient meals a day, or free and convenient cooking facilities and adequate provision of food to enable the worker to prepare his own meals. To be sufficient or adequate, the meals or food provided must include a daily source of protein, vitamins, and minerals; and (2) adequate potable water, or water that can be easily rendered potable and the means to do so. 20 CFR 655.210(e).

7. **TRANSPORTATION AND DAILY SUBSISTENCE**: Employer agrees to provide the following transportation and daily subsistence benefits to eligible workers.

   A. *Transportation to Place of Employment (Inbound*)

   If the worker completes 50 percent of the work contract period, and the employer did not directly provide such transportation or subsistence or otherwise has not yet paid the worker for such transportation or subsistence costs, the employer agrees to reimburse the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker came to work for the employer to the employer's place of employment, whether in the U.S. or abroad. The amount of the transportation payment must be no less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. The amount the employer will pay for daily subsistence expenses are those amounts disclosed in this clearance order, which are at least as much as the employer would charge the worker for providing the worker with three meals a day during employment (if applicable), but in no event will be less than the amount permitted under 20 CFR 655.173(a). The employer understands that the Fair Labor Standards Act applies independently of the H-2A requirements and imposes obligations on employers regarding payment of wages. 20 CFR 655.122(h)(1).

   *B. Transportation from Place of Employment (Outbound)*

   If the worker completes the work contract period, or is terminated without cause, and the worker has no immediate subsequent H-2A employment, the employer agrees to provide or pay for the worker's transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer. Return transportation will not be provided to workers who voluntarily abandon employment before the end of the work contract period, or who are terminated for cause, if the employer follows the notification requirements in 20 CFR 655.122(n).

   If the worker has contracted with a subsequent employer who has not agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the employer must provide for such expenses. If the worker has contracted with a subsequent employer who has agreed in such work contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's place of employment to such subsequent employer's place of employment, the subsequent employer must provide or pay for such expenses.

   The employer is not relieved of its obligation to provide or pay for return transportation and subsistence if an H-2A worker is displaced as a result of the employer's compliance with the employer's obligation to hire U.S. workers who apply or are referred after the employer's date of need during the recruitment period set out in 20 CFR 655.135(d). 20 CFR 655.122(h)(2).

   *C. Daily Transportation*

   Employer agrees to provide transportation between housing provided or secured by the employer and the employer's place(s) of employment at no cost to the worker. 20 CFR 655.122(h)(3).

   *D. Compliance with Transportation Standards*

   Employer assures that all employer-provided transportation will comply with all applicable Federal, State, or local laws and regulations. Employer agrees to provide, at a minimum, the same transportation safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR 500.104 or 500.105 and 29 CFR 500.120 to 500.128. If workers' compensation is used to cover transportation, in lieu of vehicle insurance, the employer will ensure that such workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation. Employer agrees to have property damage insurance. 20 CFR 655.122(h)(4).

8. **THREE-FOURTHS GUARANTEE**: Employer agrees to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any. 20 CFR 655.122(i).

   The employer may offer the worker more than the specified hours of work on a single workday. For purposes of meeting the three-fourths guarantee, the worker will not be required to work for more than the number of hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays. If, during the total work contract period, the employer affords the U.S. or H-2A worker less employment than that required under this guarantee, the employer will pay such worker the amount the worker would have earned had the worker, in fact, worked for the guaranteed number of days. An employer will not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time as specified in the job order. All hours of work actually performed may be counted by the employer in calculating whether the period of guaranteed employment has been met. Any hours the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to work, and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or Federal holidays), may be counted by the employer in calculating whether the period of guaranteed employment has been met. 20 CFR 655.122(i).

   If the worker is paid on a piece rate basis, the employer agrees to use the worker's average hourly piece rate earnings or the required hourly wage rate, whichever is higher, to calculate the amount due under the three-fourths guarantee. 20 CFR 655.122(i).

If the worker voluntarily abandons employment before the end of the period of employment set forth in the job order, or is terminated for cause, and the employer follows the notification requirements in 20 CFR 655.122(n), the worker is not entitled to the three-fourths guarantee. The employer is not liable for payment of the three-fourths guarantee to an H-2A worker whom the Department of Labor certifies is displaced due to the employer's requirement to hire qualified and available U.S. workers during the recruitment period set out in 20 CFR 655.135(d), which lasts until 50 percent of the period of the work contract has elapsed (50 percent rule). 20 CFR 655.122(i).

*Important Note*: In circumstances where the work contract is terminated due to contract impossibility under 20 CFR 655.122(o), the three-fourths guarantee period ends on the date of termination.

9. **EARNINGS RECORDS**: Employer agrees to keep accurate and adequate records with respect to the workers' earnings at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. The records must include each worker's permanent address, and, when available, permanent email address, and phone number(s). All records must be available for inspection and transcription by the Department of Labor or a duly authorized and designated representative, and by the worker and representatives designated by the worker as evidenced by appropriate documentation. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records must be made available for inspection and copying within 72 hours following notice from the Department of Labor, or a duly authorized and designated representative, and by the worker and designated representatives. The content of earnings records must meet all regulatory requirements and be retained by the employer for a period of not less than 3 years after the date of certification by the Department of Labor. 20 CFR 655.122(j).

10. **HOURS AND EARNINGS STATEMENTS**: Employer agrees to furnish to the worker on or before each payday in one or more written statements the following information: (1) the worker's total earnings for the pay period; (2) the worker's hourly rate and/or piece rate of pay; (3) the hours of employment offered to the worker (showing offers in accordance with the three-fourths guarantee as determined in 20 CFR 655.122(i), separate from any hours offered over and above the guarantee); (4) the hours actually worked by the worker; (5) an itemization of all deductions made from the worker's wages; (6) if piece rates are used, the units produced daily; (7) beginning and ending dates of the pay period; and (8) the employer's name, address and FEIN. 20 CFR 655.122(k).

    For workers engaged in the herding or production of livestock on the range, the employer is exempt from recording and furnishing the hours actually worked each day, the time the worker begins and ends each workday, as well as the nature and amount of work performed, but otherwise must comply with the earnings records and hours and earnings statement requirements set out in 20 CFR 655.122(j) and (k). The employer agrees to keep daily records indicating whether the site of the employee's work was on the range or off the range. If the employer prorates a worker's wage because of the worker's voluntary absence for personal reasons, it must also keep a record of the reason for the worker's absence. 20 CFR 655.210(f).

11. **RATES OF PAY**: The employer agrees that it will offer, advertise in its recruitment, and pay at least the Adverse Effect Wage Rate (AEWR), a prevailing wage rate, the agreed-upon collective bargaining rate, the Federal minimum wage, or the State minimum wage, whichever is highest, for every hour or portion thereof worked during a pay period. If the offered wage(s) disclosed in this clearance order is/are based on commission, bonuses, or other incentives, the employer guarantees the wage paid on a weekly, semi-monthly, or monthly basis will equal or exceed the AEWR, prevailing wage rate, Federal minimum wage, State minimum wage, or any agreed-upon collective bargaining rate, whichever is highest. If the applicable AEWR or prevailing wage is adjusted during the contract period, and that new rate is higher than the highest of the AEWR, the prevailing wage, the collective bargaining rate, the Federal minimum wage, or the State minimum wage, the employer will increase the pay of all employees in the same occupation to the higher rate no later than the effective date of the adjustment. If the new AEWR or prevailing wage is lower than the rate guaranteed on this job order, the employer will continue to pay at least the rate guaranteed on this job order.

    If the worker is paid on a piece rate basis, the piece rate must be no less than the prevailing piece rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity in the geographic area, if one has been issued. At the end of the pay period, if the piece rate does not result in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the employer agrees to supplement the worker's pay at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had instead been paid at the appropriate hourly wage rate for each hour worked. 20 CFR 655.120, 655.122(l).

    For workers engaged in the herding or production of livestock on the range, the employer agrees to pay the worker at least the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. If the offered wage disclosed in this clearance order is based on commissions, bonuses, or other incentives, the employer guarantees that the wage paid will equal or exceed the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, whichever is highest, and will be paid to each worker free and clear without any unauthorized deductions. The employer may prorate the wage for the initial and final pay periods of the job order period if its pay period does not match the beginning or ending dates of the job order. The employer also may prorate the wage if an employee is voluntarily unavailable to work for personal reasons. 20 CFR 655.210(g).

12. **FREQUENCY OF PAY:** Employer agrees to pay workers when due based on the frequency disclosed in this clearance order. 20 CFR 655.122(m).

13. **ABANDONMENT OF EMPLOYMENT OR TERMINATION FOR CAUSE**: If a worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the employer is not responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker, and that worker is not entitled to the three-fourths guarantee, if the employer notifies the U.S. Department of Labor and, if applicable, the Department of Homeland Security, in writing or by any other method specified by the Department of Labor or the Department of Homeland Security in the *Federal Register*, not later than 2 working days after the abandonment or termination occurs. A worker will be deemed to have abandoned the work contract after the worker fails to show up for work at the regularly scheduled time for 5 consecutive work days without the consent of the employer. 20 CFR 655.122(n).

14. **CONTRACT IMPOSSIBILITY**: The work contract may be terminated before the end date of work specified in the work contract if the services of the workers are no longer required for reasons beyond the control of the employer due to fire, weather, or other Act of God that makes fulfillment of the contract impossible, as determined by the Department of Labor. In the event that the work contract is terminated, the employer agrees to fulfill the three-fourths guarantee for the time that has elapsed from the start date of work specified in the work contract to the date of termination. The employer also agrees that it will make efforts to transfer the worker to other comparable employment acceptable

to the worker and consistent with existing immigration laws. In situations where a transfer is not affected, the employer agrees to return the worker at the employer's expense to the place from which the worker, disregarding intervening employment, came to work for the employer, or transport the worker to his/her next certified H-2A employer, whichever the worker prefers. The employer will also reimburse the worker the full amount of any deductions made by the employer from the worker's pay for transportation and subsistence expenses to the place of employment. The employer will also pay the worker for any transportation and subsistence expenses incurred by the worker to that employer's place of employment. The amounts the employer will pay for subsistence expenses per day are those amounts disclosed in this clearance order. The amount of the transportation payment must not be less (and is not required to be more) than the most economical and reasonable common carrier transportation charges for the distances involved. 20 CFR 655.122(o).

The employer is not required to pay for transportation and daily subsistence from the place of employment to a subsequent employer's place of employment if the worker has contracted with a subsequent employer who has agreed to provide or pay for the worker's transportation and subsistence expenses from the present employer's place of employment to the subsequent employer's place of employment. 20 CFR 655.122(h)(2).

15. **DEDUCTIONS FROM WORKER'S PAY**: Employer agrees to make all deductions from the worker's paycheck required by law. This job offer discloses all deductions not required by law which the employer will make from the worker's paycheck and all such deductions are reasonable, in accordance with 20 CFR 655.122(p) and 29 CFR part 531. The wage requirements of 20 CFR 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under 20 CFR part 655, subpart B, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. 20 CFR 655.122(p).

16. **DISCLOSURE OF WORK CONTRACT**: Employer agrees to provide a copy of the work contract to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences. For an H-2A worker coming to the employer from another H-2A employer or who does not require a visa for entry to the United States, the employer agrees to provide a copy of the work contract no later than the time an offer of employment is made to the H-2A worker. A copy of the work contract will be provided to each worker in a language understood by the worker, as necessary or reasonable. In the absence of a separate, written work contract entered into between the employer and the worker, the work contract at minimum will be the terms of this clearance order, including all Addenda, the certified *H-2A Application for Temporary Employment Certification* and any obligations required under 8 U.S.C. 1188, 29 CFR part 501, or 20 CFR part 655, subpart B. 20 CFR 655.122(q).

17. **ADDITIONAL ASSURANCES FOR CLEARANCE ORDERS**:

    A. Employer agrees to provide to workers referred through the clearance system the number of hours of work disclosed in this clearance order for the week beginning with the anticipated first date of need, unless the employer has amended the first date of need at least 10 business days before the original first date of need by so notifying the Order-Holding Office (OHO) in writing (*e.g.*, email notification). The employer understands that it is the responsibility of the SWA to make a record of all notifications and attempt to inform referred workers of the amended first date of need expeditiously. 20 CFR 653.501(c)(3)(i).

    If there is a change to the anticipated first date of need, and the employer fails to notify the OHO at least 10 business days before the original first date of need, the employer agrees that it will pay eligible workers referred through the clearance system the specified rate of pay disclosed in this clearance order for the first week starting with the originally anticipated first date of need or will provide alternative work if such alternative work is stated on the clearance order. 20 CFR 653.501(c)(5).

    B. Employer agrees that no extension of employment beyond the period of employment specified in the clearance order will relieve it from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation from the place of employment, as described in paragraph 7.B above. 20 CFR 653.501(c)(3)(ii).

    C. Employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration, and other employment-related laws. 20 CFR 653.501(c)(3)(iii).

    D. Employer agrees to expeditiously notify the OHO or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. 20 CFR 653.501(c)(3)(iv).

    E. If acting as a farm labor contractor (FLC) or farm labor contractor employee (FLCE) on this clearance order, the employer assures that it has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State FLC certificate. 20 CFR 653.501(c)(3)(v).

    F. Employer assures that outreach workers will have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107. 20 CFR 653.501(c)(3)(vii).

*I **declare** under penalty of perjury that I have read and reviewed this clearance order, including every page of this Form ETA-790A and all supporting addendums, and that to the best of my knowledge, the information contained therein is true and accurate. This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. 20 CFR 653.501(c)(3)(viii). I understand that to knowingly furnish materially false information in the preparation of this form and/or any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both. 18 U.S.C. §§ 2, 1001.*

| 1. Last (family) name * | 2. First (given) name * | 3. Middle initial § |
|---|---|---|
| MACHAMER | AMY | |
| 4. Title * | | |
| OWNER | | |

| 5. Signature (or digital signature) * | 6. Date signed * |
|---|---|
| Digital Signature Verified and Retained By Certifying Officer | 4/3/2023 |

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**

## A.9. Additional Crop or Agricultural Activities and Wage Offer Information

| Crop ID | Crop or Agricultural Activity | Wage Offer | Per | Piece Rate Units / Estimated Hourly Rate / Special Pay Information |
|---|---|---|---|---|
| | APPLES, & PEARS | $ 16 . 95 | Hour | |
| | PEACHES, PLUMS & CHERRIES | $ 16 . 95 | Hour | |
| | BLUEBERRIES, STRAWBERRIES, RASPBERRIES & BLACKBERRIES | $ 16 . 95 | Hour | |
| | | $ . | | |
| | | $ . | | |
| | | $ . | | |
| | | $ . | | |
| | | $ . | | |
| | | $ . | | |
| | | $ . | | |

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**

## H. Additional Material Terms and Conditions of the Job Offer

*a. Job Offer Information 1*

| 1. Section/Item Number * | A.8a | 2. Name of Section or Category of Material Term or Condition * | Job Duties |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Apples – assist with planting, weeding, irrigation, pruning, tree training, trellis maintenance, fruit thinning and picking. Picking is for fresh fruit and must be include meeting color requirements and must mostly bruise free. Use of multiple types of ladders will be necessary.
Stone fruit, (including cherries, peaches and plums) – assist with planting, pruning, tree training, weeding, irrigation, and picking. Will also include fruit thinning of peaches and plums. All fruit is to be picked tree ripe so care will need to be taking to avoid bruising and damaging fruit. Cherries will be picked with their stems on. Use of multiple types of ladders will be necessary.
Pears – assist with weeding, irrigation, pruning, tree training, trellis and picking. Picking is for fresh fruit and must be mostly bruise free. Use of multiple types of ladders will be necessary.
Blue berries – Assist with weeding, pruning, irrigation and picking. Picking is for fresh fruit and must be include selecting the ripe berries and carefully picking them without damage.
Brambles (raspberries, both red and black, and black berries) - – Assist with trellis maintenance. Weeding, pruning, irrigation and picking. These workers will pick processing berries only which will include selecting the ripe berries and carefully picking them without damage. The harvest of processing raspberries and blackberries will be done in containers separate from those used for fresh raspberries and Blackberries. They will not be involved with the harvest of fresh fruit raspberries and blackberries. Processing berries and fresh berries will never be picked at the same time in the same field.
These workers will not be involved in any fresh fruit packing for any market.
Strawberries – Assist with planting, weeding and irrigation and harvest.
Deer Fences – assist with the construction and maintenance of deer fences for various orchards and plantings.
Irrigation – Assist in maintaining the various irrigations systems both trickle and movable pipe. This will include moving and setting up aluminum pipe and risers used with and also the fire hoses used in conjunction this the pipes. As well as laying and repairing trickle lines. It may also include assisting with the installation of a new irrigation system.
Driving – Employees with a valid driver's license may be requested to drive. Not all workers are requested to drive. No one will be rejected for the position that does not possess a driver's license. The designated, licensed, employee whom we request to drive other workers to conduct errands for banking, grocery shopping or medical needs, will be offered additional hours for such activity and will be compensated at the current wage rate, including overtime pay when due.
Flowers – Assist in the digging of dahlia tubers are the end of the growing season and preparing them for winter storage.
Tractor Driving - they may be required to do some tractor driving from time to time after training.
Must be physically able to lift up to 75lbs on a consistent basis throughout the day. While working in the field, cell phone usage is limited to emergency use only. Due to safety concerns on a farm, workers must understand basic instructions in English. Workers referred as a result of this order must have a minimum of three months verifiable experience in performing the tasks described in this order

*b. Job Offer Information 2*

| 1. Section/Item Number * | F.2 | 2. Name of Section or Category of Material Term or Condition * | Inbound/Outbound Transportation |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Employer agrees to reimburse inbound transportation and subsistence expenses ($15.46 per day to a maximum of $59.00 per day) to each worker or any person, government agency or private organization which on behalf of the worker has paid or advanced such transportation and subsistence expenses, from the place from which the worker has originated, whether in the US or abroad to the place of employment, after the worker has completed 50% of the stipulated period of employment.

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**

## H. Additional Material Terms and Conditions of the Job Offer

*c. Job Offer Information 3*

| 1. Section/Item Number * | F.2 | 2. Name of Section or Category of Material Term or Condition * | Inbound/Outbound Transportation - null |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Employer will provide or pay the cost of inbound and outbound transportation and subsistence to each worker who completes the employment period, or who is terminated for medical reasons, or as the result of fire, weather, or an Act of God (as determined by the Certifying Officer), from place of employment to place from which worker has originated. The employer will provide or pay for bus services or planes or other modes of transportation to workers, or permit workers to select any means of transportation they choose and reimburse workers at no less than the most economical and reasonable common carrier transportation charges for the distances involved.

*d. Job Offer Information 4*

| 1. Section/Item Number * | A.11 | 2. Name of Section or Category of Material Term or Condition * | Pay Deductions - null |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

New York State Specific Assurances:

3. Housing for Workers: Article 6 of the NYS Labor Law, sections 193.1 and 193.2, prohibit an employer from deducting monies, either through payroll deduction or by separate transaction, any amount or charge which is not authorized by NYS labor law.
Therefore, the employer may NOT require workers to reimburse them for damage caused to housing by the individual worker(s) found to have been responsible for the damage.

12. Frequency of Pay: Article 6 of the NYS Labor Law, section 191.1a, requires that employer pay wages weekly to manual workers (farmworkers are manual workers) no later than 7 calendar days after the end of the week in which wages are earned. Therefore, manual workers can be paid weekly or biweekly (up to date; where all days, including payday hours are paid).

15. Deductions from Worker?s Pay: Article 6 of the NYS Labor Law, sections 193.1 and 193.2, prohibit an employer from deducting monies, either through payroll deduction or by separate transaction, any amount or charge which is not authorized by NYS labor law. Therefore, the employer may NOT make any other deductions NOT required by law.

Additional Assurances:
Per the Farm Laborer Fair Labor Protections Act, effective January 1, 2020, all farmworkers , including H-2A foreign guest workers, will earn one and a half times the regular rate for all hours worked over 60, and for any hours voluntarily worked on a workers day of rest.

NYS Labor Law section 201g requires that employers adopt a sexual harassment prevention policy. Interactive training and a copy of the written policy must be provided to all workers. The policy must be provided in the language spoken by the workers.

Per the New York Paid Sick Leave Law, all employees must be provided sick leave as applicable. Hours earned (up to a prescribed maximum) are rolled over from year to year for seasonal workers.
?Employers with 4 or fewer employees and a net income of less than 1 million in the prior tax year must provide employees with up to 40 hours of unpaid sick leave per year.
?Employers with between 5 and 99 employees and employers with 4 or fewer employees and a net income of greater than 1 million in the prior tax year must provide each employee with up to 40 hours of paid sick leave per year.
?Employers with 100 or more employees will provide up to 56 hours of paid sick leave per year.

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**

## H. Additional Material Terms and Conditions of the Job Offer

*e. Job Offer Information 5*

| 1. Section/Item Number * | A.8a | 2. Name of Section or Category of Material Term or Condition * | Job Duties - null |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

Day of Rest & Start & End time may vary.
Some weeks may include more hours and somedays may be increased up to 10 hours.

*f. Job Offer Information 6*

| 1. Section/Item Number * | | 2. Name of Section or Category of Material Term or Condition * | |
|---|---|---|---|

3. Details of Material Term or Condition (*up to 3,500 characters*) *

**For Public Burden Statement, see the Instructions for Form ETA-790/790A.**