

New York State Department of Labor
One Stop Office nearest to you

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21. Employer's Certification: This job 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.
Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de trabajo y contiene todos los materiales, terminus, y condiciones ofrecidos.
Employer's Signature & Title/ Firma y Título del Empleador

Steven Alan McKay, President.

READ CAREFULLY: In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truth-fullness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.
LEASE CUIDADOSAMENTE: En vista de su función básica establecida estatutariamente el Servicio de Empleo es un intercambio gratis de trabajo para juntar a los empleadores y trabajadores que buscan empleo, ni ETA ni las agencias del estado pueden garantizar la verdad y certeza de la información contenida en la Orden de Trabajo sometida por el Empleador. Tampoco, ninguna orden de trabajo aceptada o reclutada por el Servicio de Empleos constituye una oferta contractual de la cual ETA ni la agencia del Estado son parte

Public reporting burden for the ETA Form 790 is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. Respondents obligation to reply to these requirements are mandatory by 20 CFR 653.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden can be sent to the U.S. Department of Labor, Office of Workforce Investment, Room S-4321, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0134).

ATTACHMENT #1

Item #11, (con't) May also perform tasks such as planting stock and loading and unloading trucks, clearing fields and hedge rows, burning brush and moving fencing.

Employer will furnish to workers, without cost, all tools and equipment required in the performance of the duties assigned. Workers should report for work with their own suitable work clothing. Field temperatures may range from 30 degrees to 85 degrees with possible wet morning conditions.

PESTICIDE TRAINING: The employer is certified in the use and application of pesticides per Federal Environmental Protection Agency and State Department of Environmental Conservation requirements. The employer assures that workers hired under this order who will be handling pesticides will be provided appropriate training. N/A (If not applicable, insert N/A)

During temporary periods of time when work specified in the order is not available, the worker may be assigned any combination of the following related tasks: (Specify tasks) Dates of Activity for crop activities: (for 2 or more crops)

Crop/Activity	Dates of Activity	Tasks

Assurances & Requirements

GENERAL: (a) The terms and conditions of this order shall be no less favorable than those contained in any existing labor contract or agreement by me or my agent for the same type of work. A copy of the Work Agreement and/or Job Order shall be posted in the labor camp and be made available. A copy of the Job Order will be provided to the worker no later than the day on which the worker begins employment. The employer assures that the working conditions of this order comply with the applicable Federal and State employment related laws and agrees to abide by the regulations at 20 CFR 655.103, Assurances, and 20 CFR 653.501.

(b) Duly authorized State and Federal representatives (including outreach workers) will be allowed reasonable access to the workers during normal working hours.

(c) Workers hired under this order will be required to show evidence of right to work in the United States.

(d) Workers must be able to demonstrate that they are physically able to perform the work specified in this Job Order.

Item #5 - (a) Starting Date: The employer may amend the starting date of need by informing the order holding office no later than 12/31/09. If the employer fails to amend the date of need, the employer shall pay eligible workers referred through the interstate clearance system a minimum rate of the current Adverse Effect Wage Rate (AEWR) for each eight (8) hour work day in the first week on which those workers were present and available for work and no work specified in the Job Order (Item #11) is offered. (Hours required per week x current AEWR = Total dollar amount earned: 9.76 x 40 = \$390.40)

(b) Failure of workers referred against this order to notify the local office of their continued interest and/or verify the date of need no sooner than 1/1/10 nor later than 1/8/10 will disqualify the worker from the above assurance.

(c) Ending date: An extension of employment beyond the period of employment in the Job Order shall not relieve the employer from paying wages already earned, transportation/subsistence expenses and bonuses if applicable.

ATTACHMENT #3

Item #7 - (a) Employer will not contract with crew leaders currently in violation of the Migrant and Seasonal Worker Protection Act (MSPA).

(b) Employer will negotiate any and all crew leader fees directly with the crew leader.

(c) Crew Leaders anticipating employment in New York State will be required to register with the New York State Department of Labor and pay the required \$100 crew leader registration fee in addition to any other fees that may be applicable.

Item #8 - Total number of migrant and seasonal farmworkers needed 3.

Item #9 - (a) An hourly rate of not less than the Federal or State minimum wage, The Adverse Effect Wage Rate (AEWR), the prevailing hourly rate or the employers hourly rate, whichever is highest, is guaranteed to the worker for the period of employment. (Item # 5). In the event DOL promulgates a new AEWR during the recruitment or work contract period which is lower than the current AEWR at the time of application, this lower AEWR will become the guaranteed minimum (unless there is a prevailing hourly rate which is higher than the AEWR).

(b) If a piece rate is offered on the Job Order, the work at the piece rate will be guaranteed to the workers for the stated period of employment unless crop activity is such that the piece rate will not realize the workers an hourly equivalent of at least the current AEWR, in which case the worker will be paid the equivalent of an hourly rate of not less than the AEWR, the Federal or State minimum rate, the prevailing hourly rate or the employer's hourly rate, whichever is highest.

(c) The employer will make the following deductions: (1) FICA (as required) (2) Federal/State tax withholdings (as required) (3) other (specify)

(4) cash advances (as required) (5) commissary meals, if provided and to the extent permissible under Federal and State wage requirements and

(6) voluntary deductions evidenced by written authorization signed by the worker.

(d) Employer will maintain adequate payroll records. Workers will be paid weekly on friday for work through wednesday. A written statement showing (1) employer's full name and address, (2) worker's social security number, (3) total hours offered and total hours actually worked or total number of units, if piece rate, (4) total earnings for the pay period, and (5) deductions will be furnished the worker each pay day. (See attachment No. 6 Item #4 for payday/workweek applicable to this order).

ATTACHMENT #4

(e) The employer guarantees to offer employment for a minimum of three-fourths of the workdays of the total specified period during which the job order, and all extensions thereof, are in effect. This guarantee begins with the first workday after the worker's arrival at the place of employment and ends on the date specified on the job order or extensions thereof. Workers will not be required to work more than eight hours per day, on their Sabbath or Federal holidays, to meet this guarantee. The worker's average hourly earnings will be used under this guarantee where wages are paid on a piece rate basis.

(f) Workers with school age children who have migrated with such children and who depart in time to return home for the beginning of the school year shall be paid, in addition to the basic wages, any bonus or other incentive payments or other expenses to which they would be entitled had they stayed the entire job order period.

(g) The employer may terminate worker's employment hereunder at any time with **notification to the local New York State Department of Labor office** for any of the following reasons:

- (1) Refusing, without just cause, to perform the duties for which the worker was recruited and hired.
- (2) Committing a serious act of misconduct or breach of discipline.
- (3) Failure to reach productivity standards, if applicable. (See Attachment 1 Item 11)
- (4) Job Abandonment- being absent for more than one (1) work day, as shown in Item 10, without prior notification to the employer.

When worker is terminated under any of these provisions, or if the worker voluntarily terminates his employment, the employer shall not be liable for the three-fourths guarantee.

Item #10 - Workers are expected to work at least the number of days and hours specified on the Job Order. However, depending on weather, crop or other conditions, workers may be requested, but not required, to work up to six days per week and/or on their Sabbath and up to 10 hours per day.

Item #13 - (a) Employer (will not) provide three meals per day and will deduct \$ n/a per day. (Deductions will not depress the minimum wage).

(b) Employer (will) furnish free dishes, cooking utensils and convenient kitchen and cooking facilities.

(c) Employer (will) provide transportation to assure workers access to stores where they can purchase groceries and/or other incidentals.

Item #14 - Housing, beds, bedding and mattresses will be furnished at no cost to the workers. Employer assures that housing will be clean and in compliance with all applicable standards during the occupancy. Workers will be responsible for maintaining housing and surrounding area in a neat and clean manner.

ATTACHMENT #5

Item #15 - In order to assure the most effective referral and placement of workers, all referrals should be made during normal business hours.

In addition, if the person designated as the contact person on the Summary of Employment Conditions sheet attached to this order is not available for an extended period of time, there will be someone available at the farm to process referrals.

Item #16 - Collect calls will be accepted only from officials of New York State Department of Labor offices.

Item #17 - (a) Employer agrees to reimburse inbound transportation and subsistence expenses (subsistence no less than \$9.90 per day without receipts and up to \$39.00 per day maximum) 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 residence, place of last employment or place of recruitment to the job site after the worker has completed 50% of the stipulated period of employment from initial date of need or from the day after actual arrival of worker if later than the stated date to report.

(b) The employer assures that the employer will bear and pay transportation related expenses either directly to the provider of travel or indirectly to reimburse the worker so that the workers weekly pay is not diminished below the applicable Federal minimum wage required by Section 6 of the Fair Labor Standards Act, 29 USC 201.

(c) Employer will provide or pay the cost of return transportation and subsistence to each worker who completes the employment period, or who is terminated for medical reasons, or as the result of an Act of God, enroute from place of employment to place of recruitment, except when the worker is not returning to his place of recruitment and had subsequent employment with an employer, who will bear transportation expenses.

(d) Employer will not be responsible for providing return cost of transportation and subsistence enroute from place of employment to place of recruitment if the worker voluntarily abandons the job or is terminated for cause.

(e) The amount of transportation payment will be equal to the most economical and reasonable similar common carrier charges for the distance involved. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to the applicable regulations of the Interstate Commerce Commission or the United States Department of Labor. If requested by the worker, the employer will assist in making transportation arrangements.

(f) 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.

SUMMARY OF EMPLOYMENT CONDITIONS

1. Employer: Micosta Enterprises Inc.
2. Referral instructions: Apply directly with employer, Steven McKay (518-822-9708) or at your closest One Stop Office.

3. Crop/Activity/Wage Information:

Crop/Activity	Piece Rate	Production Unit (1)	Hourly Wage (2)
General farmwork	n/a	n/a	\$9.76
Pruning fruit trees and bushes	n/a	n/a	\$9.76

(1) Minimum Productivity Standards

- (2) Employer agrees to pay all workers employed in the 2010 season at the 2010 AEWR when it is established.

4. Workers will be paid weekly on friday for work through wednesday.

5. Workers required to be covered by Workers Compensation.

Compensation Carrier: State Insurance Fund Policy # Z2028 512-8.

Policy holder/address : Micosta Enterprises Inc., 3007 Rte. 20, Hudson, N.Y. 12534.

Person to be notified of injury w/phone number: Steven McKay (518-822-9708).

Deadline for notification: **Immediately, but no later than 30 days from date of injury.**

6. Workers (will not) be covered by disability benefits.

7. Work performed under this order (will) be covered by Unemployment Insurance:

8. The employer (will not) pay overtime.

9. (a) Employer (will not) provide three meals per day and will deduct \$n/a per day. (Deductions will not depress the Federal minimum wage).

(b) Employer (will) furnish free dishes, cooking utensils and convenient kitchen and cooking facilities.

(c) Employer (will) provide transportation to assure workers access to stores where they can purchase groceries and/or other incidentals and/or medical necessities.

ATTACHMENT #6
(CONTINUED)

SUMMARY OF EMPLOYMENT CONDITIONS

10. DEDUCTIONS FROM WAGES:

<u>Type:</u>	<u>Amount:</u>
Social Security	<u>\$ As Required</u>
Federal/State Withholding Tax	<u>\$ As Required</u>
Meals	<u>\$ n/a</u>
Other	<u>\$ As requested/agreed</u>

11. NOTES TO WORKER (See Item #19 of ETA 790)

A copy of the full job order is available for inspection at the order holding office. The employer has guaranteed your first week wages unless he/she notifies this Department of Labor Office of a later starting date by 12/31/09.

In order for you to be eligible for this guarantee, you must contact the Department of Labor Office during the period of 1/1/10 and 1/8/10, at:

NYS Department of Labor - DoE
Hudson One Stop
Columbia Greene Community College
4400 Rt.23
Hudson, N.Y. 12534

Any Department of Labor Job Service Office will assist you in doing this.

12. Alternate work tasks to be performed, and pay during first week in case of crop delay: N/A

REQUEST FOR CONDITIONAL ACCESS INTO CLEARANCE SYSTEM

NAME OF EMPLOYER: Micosta Enterprises Inc.

LOCATION AND DESCRIPTION OF HOUSING: House with all facilities located at 3007 Rte.20, Hudson N.Y. 12534

I hereby request conditional access into the intrastate/interstate clearance system so that my clearance order can be transmitted to labor supply states in a timely manner for the recruitment of agricultural workers.

As a condition of placing my order into clearance, I assure that such housing will be in full compliance with the requirements of the U.S. Department of Labor and Part 15 of the New York State Sanitary Code for Migrant Labor Camps by 12/6/09 which is 30 days prior to date of need.

Representatives from the New York State Department of Labor, New York State Health Department and/or U.S. Department of Labor are invited to inspect such housing at any reasonable time to verify its condition.

Steve Albanly
EMPLOYER'S SIGNATURE

11/20/09
DATE



U.S. Department of Labor Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
536 S. Clark Street
9th Floor
Chicago, IL 60605

December 28, 2009

MICOSTA ENTERPRISES, INC.
3007 RTE 20
HUDSON, NY 12534

No. of Job Openings: 3
Occupation: FARMWORKER AND LABORER, CROP
Period of Employment: 01/15/2010 through 04/30/2010
Case Reference Number: C-09328-21120
Determination Date: December 18, 2009

In reply refer to: TLC.Chicago@dol.gov

RE: MICOSTA ENTERPRISES, INC.

Dear Sir/Madam:

Please make sure you read all instructions and information contained in this letter carefully. Your application seeking temporary labor certification under the H-2A temporary agricultural program has been reviewed and accepted for processing. Your application is timely and contains the required assurances that the conditions of employment necessary to ensure that the wages and working conditions of U.S. workers similarly employed will not be adversely affected. In order to receive a final determination on your temporary labor certification application, you are required to:

1. Cooperate with the State Workforce Agency (SWA) serving the area of intended employment to prepare a job order for intrastate and interstate recruitment of U.S. workers (20 CFR 655.102(d)(1)). The job order will be managed on your behalf by the SWA until the end of the recruitment period, which shall end 30 days after the expected start date of employment, and direct applicants to report or send resumes to the nearest local office of the SWA prior to referral to your place of employment. For applications filed by an association of agricultural producers, the SWA will prepare a single job order in the name of the association on behalf of all the employer members duly named in the application.

Based on the anticipated worksite(s) contained in your job order and the areas of traditional or expected labor supply, the SWA will promptly transmit a copy of your job order to the following states to initiate recruitment of U.S. workers:

States for Recruitment: New Jersey, Pennsylvania
Labor Supply State: Florida

Important Note(s): The SWA will provide you with documentation identifying the job order number(s) with the start and end dates of the posting of your job order. Please make sure that you maintain this documentation in your file and be prepared to submit such documentation in response to a request from our office.

2. Accomplish the following recruitment steps on your own between now and the expected date on which the foreign worker(s) will depart for your place of employment, or 3 days prior to the expected start date of employment, whichever occurs first:

A. *Contact Former U.S. Employees (20 CFR 655.102(d)(3))*: Establish contact by mail or other effective means former employees who were employed by you in the occupation at the place of employment during the previous year and solicit their return to the job this year. You are not required to contact former employees who were dismissed by you for cause, abandoned the worksite, or were provided documentation at the end of their previous period of employment explaining the lawful, job-related reason(s) they would not be re-contacted.

Important Note(s): You must maintain in your file copies of correspondence signed and dated by you or, if other means of contact are used, dated logs demonstrating that each former employee was contacted and be prepared to submit such documentation in response to a request from our office. You must also list in the recruitment report any former employees you contacted who did not return because they were either unable or unwilling to return to the job or did not respond to your request. If any documentation was provided to you by former employees showing evidence of their inability, unwillingness, or non-responsiveness, please also maintain such documentation in your file.

B. *Placement of Newspaper Advertisements (20 CFR 655.102(d)(2) and (4))*:

a. **Local Advertisements** Place an advertisement on 2 separate days, which may be consecutive, one of which must be a Sunday, in a local newspaper of general circulation serving the area of intended employment. If your job opportunity is located in a rural area that does not have a newspaper with a Sunday edition, you must, in place of one Sunday edition, advertise in the regularly published daily edition with the widest circulation in the area of intended employment.

If a professional, trade or ethnic publication is more appropriate for the occupation and the workers likely to apply for the job opportunity than a general circulation newspaper, and is the most likely source to bring responses from able, willing, qualified, and available U.S. workers, you may use such a publication in place of one of the newspaper advertisements, but may not replace the Sunday advertisement or its substitute publication for employment in rural areas.

b. **Multi-State Advertisements** Place one (1) advertisement in a newspaper of general circulation in the following states:

States for Recruitment: New Jersey, Pennsylvania
Labor Supply State: Florida

c. Required Content for Newspaper Advertisements In accordance with Federal regulations at 20 CFR 655.103, advertisements must contain the following information:

- The employers name and the geographic area(s) of employment with enough specificity to apprise applicants of any travel requirements, or in the event that an application is filed by an association of agricultural producers, a statement indicating that the name and location of each employer member can be obtained from the SWA of the state in which the advertisement is run;
- A description of the job opportunity with enough specificity to apprise applicants of the services or labor to be performed;
- The anticipated start and end dates of employment;
- The wage offer of **\$9.76 per hour**.
- The three-fourths guarantee;
- If applicable, a statement that work tools, supplies, and equipment will be provided at no cost to the worker;
- A statement that housing will be made available at no cost to workers, including U.S. workers, who cannot reasonably return to their permanent residence at the end of each working day;
- If applicable, a statement that transportation and subsistence expenses to the worksite will be provided by the employer;
- A statement that the position is *Temporary* and the total number of job openings the employer intends to fill;
- A statement directing applicants to report or send resumes to the nearest local office of the SWA of the state in which the advertisement is run; and
- Contact information for the applicable SWA and the job order number **NY0926115**.

Important Note(s): You must maintain in your file copies of newspaper pages or tear sheets (with the date of publication and full copy of the advertisement) of the publications in which the advertisements appeared, or other proof of publication containing the text of the printed advertisements and the dates of publication furnished by the newspaper. Please make sure that you maintain this documentation in your file and be prepared to submit such documentation in response to a request from our office.

3. Based on the results of your initial recruitment efforts, you must submit a written recruitment report containing your signature and dated to our office on January 8, 2010. Please remember that you must interview all U.S. workers who apply to you (or on whose behalf an application is made), including those who apply directly to you, for your job opportunity. Any U.S. worker who applies to you, but whom you reject for other than a lawful, job-related reason or fail to provide with a lawful, job-related reason for rejection, will be considered available for work by our office.

Important Note(s): Your recruitment report must (a) list the total number of job openings you intend to fill; (b) identify each recruitment source by name, (c) state the name, address, and telephone number of each U.S. worker who applied for the job during the recruitment period and former U.S. employees who were contacted and by what means each were contacted, and (d) explain the lawful job-related reason(s) for not hiring each U.S. worker. You must maintain in your file copies of newspaper pages or tear sheets (with the date of publication and full copy of the advertisement) of the publications in which the advertisements appeared, or other proof of publication containing the text of the printed advertisements and the dates of publication furnished by the newspaper. Please make sure that you maintain this documentation in your file and be prepared to submit such documentation in response to a request from our office (20 CFR 655.102(k)).

By virtue of this acceptance letter, you are authorized conditional entry into the interstate clearance system based upon your written assurance to provide for or secure housing for those workers who are not reasonably able to return to their permanent residence at the end of the work day, without charge to the worker, that complies with the applicable housing standards as set forth in 20 CFR 655.104(d). If not done so already, the SWA will make every effort to schedule and complete a pre-occupancy inspection of your housing and promptly notify you of any deficiencies that must be corrected. If your application meets the criteria for certification and the SWA was unable to complete the required housing inspection by the statutory deadline of 30 days prior to the expected start date of employment, certification of your application will not be withheld by our office.

Please remember to include your Case Reference Number on any correspondence sent to the Chicago NPC. Failure to do so may result in a delay in processing your application. In addition, our office must approve in advance changes you may need to the period of employment, number of workers requested, or other minor modifications contained in your application. Any request for such changes must be submitted to our office in writing by mail or via electronic mail at H2a.amend&extend.chicago@dol.gov.

Please direct any inquiries regarding your case to the Chicago NPC at (312) 886-8000 or via electronic mail at TLC.Chicago@dol.gov and send the aforementioned recruitment report to the following address:

United States Department of Labor
Employment and Training Administration
Chicago National Processing Center
536 S. Clark Street
9th Floor
Chicago, IL 60605

Sincerely,

William L. Carlson
Certifying Officer

CC: RURAL EMPLOYMENT OFFICE