

Agricultural Personnel Management Program



University of California

Sample Contract between Farmer and Farm Labor Contractor

Agreement to Furnish Labor*

** This Sample Agreement to Furnish Labor was adapted for educational use by Howard Rosenberg, University of California at Berkeley, from an original by Michael Hogan, of the firm Littler, Mendelson, Fastiff, Tichy, and Mathiason, Fresno office. It is not intended and should by no means be regarded as legal advice, nor be treated as a substitute for the independent advice of counsel.*

THIS AGREEMENT is entered into this _____ day of _____, 19____, by and between _____, hereinafter referred to as Farmer, and _____, hereinafter referred to as Contractor.

WHEREAS, Farmer is and has been for some time engaged in the farming business; and

WHEREAS, Contractor is experienced in providing and managing labor for farming operations; and

WHEREAS, it is the mutual desire of the parties that Contractor provide and manage labor for the growing and/or harvesting of Farmer's crops described in this Agreement, each party acting independently, in pursuance of his own separate business.

NOW, THEREFORE, Farmer and Contractor agree as follows:

CONTRACTOR'S LICENSE: Contractor warrants and represents that s/he is a duly licensed farm labor contractor under the laws of the United States and the State of California, and agrees to provide Farmer with a copy of its state license and federal certificate of registration within five (5) days after the date this contract is signed and on an annual basis thereafter.

COMPLIANCE WITH MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT AND CALIFORNIA FARM LABOR CONTRACTOR LAWS: Contractor agrees to comply with the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) while fulfilling the terms of this Agreement. Contractor agrees that all persons performing farm labor contracting activities (defined below) pursuant to this Agreement will, before beginning such activities, be properly registered and/or licensed as farm labor contractors or farm labor contractor employees pursuant to State and federal laws. If any such persons engage in farm labor contracting activities for Farmer without having first obtained any legally required farm labor contractor certificates of registration or licenses, Contractor agrees to indemnify and hold Farmer harmless for any and all claims that may arise concerning the resulting violations of federal and State farm labor contractor laws.

Contractor agrees to provide Farmer with a written list of the names, addresses, telephone numbers, and social security numbers of all persons employed by Contractor who engage in the farm labor contracting activities of soliciting, recruiting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker pursuant to this Agreement. Contractor also agrees to provide photocopies of his certificates of registration for all such persons and/or farm labor contractor employee certificates of registration issued by the United States Department of Labor. For any such persons that are defined as "farm labor contractors" by the California Labor Code, including any persons who are either employed to transport workers or provide transportation for a fee, Contractor shall have additionally attached photocopies of their farm labor contractor licenses issued by the California Labor Commissioner.

If any persons not identified on said list begin to engage in farm labor contracting activities, as defined above, for Farmer during the term of this Agreement, Contractor will provide Farmer with written notice of that person's name, address, phone number, and social security number, along with photocopies of any applicable farm labor contractor certificates of registration, farm labor contractor employee certificates of registration, or California farm labor contractor licenses within 24 hours after that person begins in farm labor contracting activities for Farmer.

Contractor additionally agrees to provide to each migrant and seasonal agricultural worker furnished by Contractor to Farmer with the attached Worker Information document (entitled "Migrant and Seasonal Agricultural Worker Protection Act -- Worker Information" See Form A attached to this Agreement), which provides information as to the place of employment, period of employment, wage rates to be paid, crops and kinds of activities to be worked on, transportation and other benefits, housing benefits, the existence of a labor dispute, and the existence of any arrangements with establishment owners or agents for the payment of a commission or other benefits for sales made to the workers. This document will be provided to all workers at the time that they are recruited (i.e., by crew bosses or other recruiting agents of the Contractor), and will be filled out in as much detail as possible by representatives or employees of Contractor in both Spanish and English. Such representatives or employees will read the attached Worker Information document to every migrant and seasonal agricultural worker in the worker's language (i.e., Spanish or English) at the time that each such worker is recruited.

After the attached Worker Information document is read to each worker, he or she will be required to sign the attached Confirmation of Receiving Worker Information (Form B attached). After each worker signs the attached Confirmation, the representative or employee who read the Worker Information document to that worker will sign the Declaration (Form C attached) indicating that he or she is fluent in Spanish and English, that he or she has read the Worker Information document to the worker in question in that worker's primary language, and that the worker indicated an understanding of the information provided. If the crew bosses, or anyone else who recruits workers, are illiterate or unable to carry out these procedures on their own, Contractor will ensure that a representative or employee of Contractor is provided to assist these "recruiters" and carry out these procedures before such workers travel from the towns or neighborhoods where they live to work for Farmer.

Contractor also agrees to post the required Notice concerning the rights of workers pursuant to the Migrant and Seasonal Agricultural Worker Protection Act in easy-to-see places in the fields where all workers furnished by Contractor for employment with Farmer may see it regularly. Contractor also agrees to ensure on a daily basis that this Notice is properly posted.

Contractor additionally agrees that all migrant and seasonal agricultural workers furnished to Farmer in accordance with this Agreement will receive complete itemized wage statements in a form identical to the attached blank wage statement for each pay period in compliance with all federal and state laws.

Contractor agrees to indemnify and hold harmless Farmer for any failure on the part of Contractor to abide by the requirements of the Migrant and Seasonal Agricultural Worker Protection Act. The rights of Farmer to indemnification for any such violations by Contractor are set forth in paragraph 3.C., "Indemnity," on page 3 of this Agreement.

CONTRACTOR'S FUNCTIONS:

Growing Crop: Contractor agrees, as an independent contractor, to furnish and manage labor to perform the service specified in this Agreement for the consideration in money and/or percentage of proceeds agreed to be paid by Farmer. Labor shall include, but shall not be limited to planting, cultivating, irrigating, weeding, thinning, pruning, hoeing, dusting, spraying, fertilizing, and harvesting.

Insurance: Contractor will provide and keep in force at his own expense the following insurance:

Workers' compensation insurance in accordance with the laws of the State of California, to include employer's liability insurance coverage, with the limit of no less than One Million Dollars (\$1,000,000).

General comprehensive liability and property damage liability insurance with a combined single liability limit of no less than One Million Dollars (\$1,000,000), with Farmer named as additionally insureds.

Contractor will deliver to Farmer no later than the commencement of work, certificates of insurance stating that the above

insurance is in effect. The certificate of insurance from the general comprehensive liability insurance carrier will include a statement that Contractor is insured for work performed by him and his employees under the terms and provisions of this Agreement. Underwriters will have no right to recovery or subrogation against Farmer, its divisions, affiliates, or subsidiary companies, it being the intention of the parties that the insurance so affected shall protect both parties and be primarily liable for any and all losses covered by the above described insurance. It is further understood that the insurance provided by Contractor under this Agreement shall be primary insurance for all assureds, and such other insurance carried by Farmer and its affiliated and subsidiary companies shall not be called upon by Contractor's insurers for contributing, deficiency, concurrent or double insurance or otherwise.

Indemnity: Contractor agrees to protect, defend, indemnify and hold Farmer and its employees free and harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character including the amount of judgment, penalties, interests, court costs and legal fees incurred by Farmer in defense of same, arising in favor of any party, including governmental agencies or bodies on account of taxes, liens, claims, debts, personal injuries, death (including employees of Contractor), or damages to property (including property of Contractor), and without limitation by enumeration all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the work to be performed by Contractor hereunder, except only claims arising out of accidents resulting from sole negligence of Farmer. Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand or suit at its expense and agrees to bear all other costs and expenses related thereto, even if said claim, demand or suit is groundless, false or fraudulent.

Labor Employment and Management: Contractor will not allow any of his/her agents or employees to enter upon Farmer's premises unless said persons are legitimately entitled to work according to the laws of the United States and the State of California. Contractor agrees to execute a Federal form I-9 for all persons working on Farmer's premises and provide copies of the I-9s to Farmer on a timely basis. It is understood that, in performing duties under this Agreement, Contractor is acting as an independent contractor. Contractor is solely responsible for the operation, maintenance and repairs of its equipment. Except as is expressly otherwise provided by California Labor Code Section 1140.4(c), and the specific limited purpose for which said section was enacted, Contractor is the sole employer of all labor required to perform work hereunder, and said persons shall perform said work under Contractor's sole discretion and control, Farmer having no right to direct or control those persons in any respect whatsoever. Further subject to said limitations of Section 1140.4(c), Farmer is not an employer or co-employer of said labor and is relying entirely upon Contractor to provide persons and equipment necessary to perform Contractor's duties under this Agreement.

Standard of Performance: Contractor agrees to perform all work and services under this Agreement in a good workmanlike and farmerlike manner, in accordance with the best standards and practices prevailing in the business.

PAYMENTS AND EXPENSES:

Farmer will pay Contractor no less frequently than once per week for services rendered by Contractor, after presentation with a written invoice specifying the types and dates of work performed and the basis on which sums due are calculated. The types of work and bases of payment for it under this Agreement are as follows:

Except as is otherwise specifically provided in this Agreement, Contractor will, at its own expense, supply all material, equipment, personnel and labor necessary to perform its duties under this Agreement.

Contractor shall keep adequate books of account and records to fully account for expenditures made in the performance of this Agreement and shall allow Farmer full access to such books and records at any reasonable time.

COMPLIANCE WITH FEDERAL, STATE AND MUNICIPAL LAWS: Contractor will comply with all federal, state and municipal laws and regulations relating to the performance of its duties hereunder including, but not necessarily limited to, those

laws and regulations concerning agricultural labor, the establishment of pay rates, the payment of employees, the payment of taxes, the maintenance of payroll and other records, the reporting of employee information to governmental agencies and the posting of such notices and the providing to employees of such pamphlets as is required by law. Farmer will have the right at any time during working hours to inspect Contractor's books and records to make certain that Contractor is complying with said federal, state and municipal laws and regulations. Contractor agrees to provide to Farmer, on a regular basis, copies of its payroll records, in accordance with MSAWPA, 29 CFR part 500.80(c).

MAINTENANCE OF RECORDS AND COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986:

Contractor shall be responsible for the creation and holding of all employment records or documents required by law which includes, but is not limited to:

Time and payroll records for all employees of Contractor performing labor for Farmer.

All cancelled checks, reporting forms, or other appropriate proof that Contractor has forwarded to the appropriate governmental authorities regarding all amounts payable to them with respect to his employees under laws pertaining to the following: Unemployment insurance; state disability insurance; social security; and income tax withholding.

Cancelled paychecks or other appropriate proof employees have been paid the wages due them.

INS Form I-9 for all Contractor employees working on Farmer's premises.

Contractor shall furnish to Farmer copies of the records and other documents listed above as required by law or upon Farmer's request. Contractor shall also permit Farmer to inspect all records or documents listed above at any time during normal business hours.

FAILURE TO PERFORM: Neither party to this Agreement shall be required to perform, or be liable for failure to perform, if nonperformance is caused by shortages of equipment, materials or supplies; shortages or lack of cooling or processing facilities; water shortages; car or truck shortages; transportation difficulties; war, hostilities or national emergencies; acts of God; the elements; mechanical breakdown; power failure; or causes beyond the control of the party unable to perform. Strikes, work stoppages, labor shortages or labor demands, or inability to produce labor shall not excuse Contractor's performance. In the event that Contractor fails to perform under any term or provision of this Agreement, said failure to perform will constitute a material breach of this contract and Farmer may at its election, contract with any other party of its choice to perform the work described in this Agreement.

INDEPENDENCE OF PARTIES: It is understood, agreed and intended by the parties to this Agreement that in performing this Agreement the parties are each separately and independently carrying on their respective farming businesses, and that this Agreement does not and shall not create or constitute a partnership or joint venture between them.

NOTICES: All notices to be given under this Agreement shall be considered delivered when mailed to the parties by United States Postal Service, postage pre-paid, addresses as follows:

CONTRACTOR: _____

FARMER: _____

or to such other places as the parties may designate by written notices, or by personal delivery, or in any other manner provided by law.

BINDING ON SUCCESSORS: This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, devisees and assigns of the parties hereto.

ENFORCEABILITY: In the event that it shall be determined by a court of competent jurisdiction that any provision herein contained is illegal or unenforceable, such determination shall solely affect such provision and shall not impair the remaining provisions of this Agreement.

DEFAULT: Contractor shall be in default under this Agreement upon the happening of any of the following events or conditions:

Failure to perform any item or provision set forth or referred to in this Agreement.

Breach of warranty, representation, or statement made or furnished to the company or on behalf of Contractor. In the event Contractor fails to perform under any term or provision of this Agreement, said failure to perform will constitute a material breach of this Agreement and Farmer may, at its election, contract with any other party to perform the work contemplated herein.

WAIVER OF DEFAULT: No waiver by Farmer or Contractor of any default shall operate as a waiver of any other default or of the same default on a future occasion.

INTEGRATED DOCUMENT: This writing is intended by the parties as a final expression of their Agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usages of the trade shall be relevant to supplement or explain any term used in this Agreement. This Agreement may be amended only by a written instrument signed by an authorized representative of the parties hereto.

TRANSFER OF OBLIGATIONS: Contractor may not transfer, assign or delegate his duties under this Agreement without the prior written consent of Farmer.

TIME: Time is of the essence in this Agreement.

TERM: The term of this Agreement will be for the _____ crop year. Contractor will commence work on the day designated by Farmer and will continue work until all crop is harvested or other cultural work is completed for the applicable crop year or until Farmer directs Contractor to terminate work, whichever shall occur first. Contractor will suspend or resume work at any time as directed by Farmer.

The parties have executed this Agreement this _____ day of _____, 19____.

By _____
Contractor

By _____
Farmer

FORM B

Confirmation of Receiving Worker Information

I, _____, declare:

[name of Contractor representative or employee] has read to me the attached Migrant and Seasonal Agricultural Worker Protection Act -- Worker Information document in my primary language (i.e., either Spanish or English) and has explained to me all of the information set forth in that document.

I fully understand all of the information set forth on the attached Migrant and Seasonal Agricultural Worker Protection Act -- Worker Information document.

I declare, under penalty of perjury, that the statement above is true and correct.

Executed this ____ day of _____, 19 __, at _____, California.

Name: _____

(print)

Dated: _____ Signature: _____

Address: _____

Phone No.: _____

FORM C

**Declaration Of Person Reading To Worker the Information Required By
The Migrant And Seasonal Agricultural Worker Protection Act**

I declare that I am fluent in the English and Spanish languages, and that I have read the foregoing CONFIRMATION OF WORKER INFORMATION out loud in the primary language (i.e., English or Spanish) of the person whose signature appears above, in that person's presence, and that the person whose signature appears above told me that he or she understood the contents of what was read.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of _____, 19 __, at _____, California.

Signature: _____

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