

# AGREEMENT

This agreement, entered into as of the 16<sup>th</sup> day of February 2006, by and between the Farm Labor Organizing Committee AFL-CIO (hereinafter referred to as the "Union") and the North Carolina Grower's Association (hereinafter referred to as the "Association") is a **MODIFICATION** of only those paragraphs of those specific Article(s) or an **ADDITION TO** only those Article(s) that are set forth below of the Agreement between the Union and the Association that was signed and became effective on 16 September 2004, as modified by the Modification of that Agreement of February 2005..

## ARTICLE III

### UNION RECOGNITION/HIRING/NONDISCRIMINATION

**HIRING.** After provision of advance written notice to the Union of at least thirty (30) days in advance of any recall or recruitment of any worker, seniority in work opportunities and a worker's right of recall for employment by the Association or any Association Member shall be provided according to the following order:

(A) First, with respect to a work opportunity and a worker's right of recall with a particular agricultural employer member of the Association, whether that same agricultural employer member has specified a timely preference to the Association for the return or hire of a particular worker who has: (i) previously had a satisfactory season of employment by that same agricultural employer member of the Association in the year immediately preceding the year in which that worker is designated as a "preferred" worker with that same grower member of the NCGA

(a) In any one season/year, the total quantity of workers that may be designated as "preferred" by a specific grower pursuant to ¶III.(6)(A) above shall not exceed the total number of H2A worker(s) for which that grower is certified to employ by the U.S. government in that same season/year;

## ARTICLE VI COMPENSATION

(3) **Visa, Border Crossing, and Travel Expenses** For 2006 and 2007, NCGA shall:

- (a) Pay all visa and visa interview expenses incurred by any workers covered by the collective bargaining agreement ("CBA").
- (b) The visa and visa interview expenses referred to in ¶3(a) shall be paid by the NCGA or its agents directly to the required U.S. authorities and not through the local recruiters.
- (c) NCGA member growers shall reimburse any workers covered by the CBA for any border crossing fees paid by any such worker and for the lesser of the actual cost or the most economical means of public transportation for local travel from the worker's home to Monterrey, Mexico, travel from Monterrey, Mexico to the U.S.-Mexico border, and travel from the U.S.-Mexico border to Vass, North Carolina during the first workweek that worker is in North Carolina.
- (d) The NCGA shall ensure that transportation from Monterrey, Mexico to the U.S.-Mexico border, and travel from the U.S.-Mexico border to Vass, North Carolina is available to each worker covered by the CBA via charter bus; provided, however, there may be situations in which a charter bus is not feasible due to the small number of workers traveling at the same time. In the instances when a charter bus is not provided, the workers can purchase a ticket on the bus line of their choosing. The NCGA shall provide all workers covered by the CBA and FLOC with documentation of the actual cost of this transportation no later than thirty (30) days prior to the first bus trip undertaken in the 2006 and 2007 seasons. Immediately upon a determination that a particular worker(s) has been selected for re-employment in 2006 and/or 2007 pursuant to the hiring preferences set forth in the then applicable CBA, the NCGA's agents shall also provide each worker with oral notice of the cost and acceptable method(s) of payment for each leg of the transportation that is described in this sub-paragraph.
- (e) The NCGA shall ensure that each worker covered by the CBA pays the upfront costs of transportation and border crossing fee directly to the bus driver or bus company representative and U.S. immigration authorities, respectively, and not to Manpower of the Americas, local recruiters, the NCGA, any current or former member of the NCGA since 1 January 2000, or any other individual or entity.

(f) Implementation of all parts of ¶¶3(a)-(e) above of this Amendment to the CBA shall occur upon the final approval of the provisions of ¶9 of the Settlement Agreement filed on 14 September 2005 in José Manuel Garcia-Alvarez, et al. v. NCGA, et al., File No.: 04 CVS 14949 (Wake County Superior Court).

(g) The NCGA shall not be required to pay the expenses described in ¶¶(3)(a)-(e) above in 2007 if the holding under 29 U.S.C. § 206 in de Luna-Guerrero, et al. v. North Carolina Grower's Association, et al., 338 F.Supp.2d 649 (E.D.N.C. 2004), is overruled by a final decision of a North Carolina appellate court, a final decision of the Fourth Circuit, an amendment to the Fair Labor Standards Act, or a final rule promulgated under the Administrative Procedures Act that has not been enjoined, ruling that an H2A employee's payment of such expenses does not constitute a violation of the Fair Labor Standards Act. If this escape clause is triggered after the visa, border crossing, and travel expenses have been paid or reimbursed for 2007, no repayment by the any covered worker shall take place.

(4) **Recruitment** - For 2006, each H2A worker jointly employed by the NCGA shall:

(a) Pay an \$80 "H2A fee" via payroll deduction by the NCGA grower-member who directly employs that worker in North Carolina, so long as the amount deducted in any such workweek does not reduce the worker's net pay below \$5.15 per hour or the applicable minimum wage under the Fair Labor Standards Act and/or North Carolina Wage and Hour Act, whichever is higher. The deduction shall be specified on the worker's paycheck as "H2A fee." To the extent possible, the authorization for the specific deduction, with language to be agreed upon by the parties, shall be obtained from each worker prior to his outbound transportation back to Mexico. For those workers who were not in North Carolina working for Defendants in 2005, the authorization shall be obtained during the NCGA orientation in Vass.

(b) Other than the \$80 "H2A fee" described in ¶IV.(4)(a) above, for 2006, the NCGA, its grower-members, any agent(s) or representative(s) of the NCGA or any grower-member of the NCGA, including, but not limited to, the Manpower of the Americas (MOA), and any persons or entities used or employed by MOA to recruit or provide any service(s) or information to any worker(s) to be employed by NCGA and/or any grower-member(s) of the NCGA, shall not charge or collect, directly or indirectly, any money or anything of value from any such worker who is

designated for employment by the NCGA and/or one of the NCGA's grower-members;

(c) For 2007, the NCGA, its grower-members, any agent(s) or representative(s) of the NCGA or any grower-member of the NCGA, including, but not limited to, MOA, and any persons or entities used or employed by MOA to recruit or provide any service(s) or information to any worker(s) to be employed by NCGA and/or any grower-member(s) of the NCGA, shall not charge or collect, directly or indirectly, any money or anything of value from any such worker who is designated for employment by the NCGA and/or one of the NCGA's grower-members;

(d) For 2007, NCGA and FLOC shall bargain to put in place a new recruiting system by a date certain in 2006, such date to be determined during the bargaining process by an amendment to the CBA. Any bargaining on this issue shall be conducted under National Labor Relations Act ("NLRA") standards. If the parties bargain to impasse under these standards, the NCGA shall have the authority to decide what kind of system to implement subject to the following provisions:

(i) The terms of ¶IV.(4)(c) would apply to any entity or person(s) used or employed by the NCGA as part of any recruiting system that NCGA unilaterally implemented if the NCGA and Union bargained to impasse;

(ii) The NCGA and its grower-members would be responsible under the terms of the CBA for any violation(s) of the terms and conditions that are or may be specified in that CBA for 2007, within established principles of agency law.

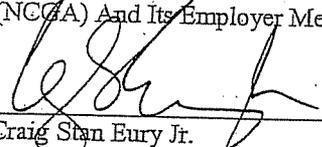
(iii) The recruiting system used by the NCGA in 2007 shall make reasonable use of any recruiting resource(s) or assistance that FLOC may make available to the NCGA upon payment of reasonable compensation by the NCGA to FLOC for the use of any such recruiting resource(s) or assistance, so long as the recruiting resource(s) or assistance provided by FLOC results in a net reduction in recruiting costs to NCGA and that FLOC demonstrates that it has the resources and capability to provide such assistance. If the NCGA and FLOC disagree over the resource(s) or assistance to be provided by FLOC, the NCGA will implement the recruiting system and the dispute shall be subject to the grievance procedure.

(5) Implementation of the Amendments to the CBA set forth in ¶¶IV.(4)(a)-(d) shall occur upon the preliminary approval of the provisions of the Settlement Agreement filed on 14 September 2005 in José Manuel Garcia-Alvarez, et al. v. NCGA, et al., File No.: 04 CVS 14949 (Wake County Superior Court).

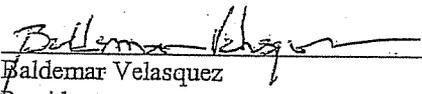
SIGNATURE PAGE

The Parties hereto sign and have their signatures witnessed attesting to the acceptance of this agreement.

For the North Carolina Growers Association, Inc.  
(NCGA) And Its Employer Members:

  
\_\_\_\_\_  
Craig Stan Eury Jr.  
Executive Director

For the Farm Labor Organizing Committee  
(FLOC, AFL-CIO):

  
\_\_\_\_\_  
Baldemar Velasquez  
President

\_\_\_\_\_  
Member of the NCGA

\_\_\_\_\_  
Member, FLOC

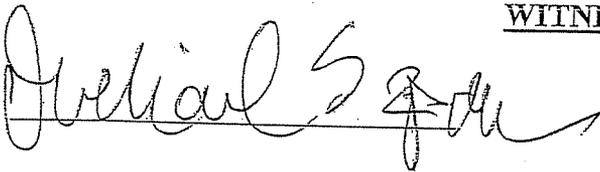
\_\_\_\_\_  
Member of the NCGA

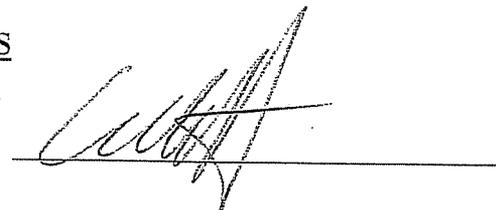
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Member, FLOC

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Member of the NCGA

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Member, FLOC

WITNESSES

  
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